

Title 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

Adopted amendments effective December 20, 2004
Peremptory amendments effective January 6, 2005

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Authority: Illinois Compiled Statutes, ch. 430, pars. 30/4(a) and 9(a)

Note: New language is underscored.

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
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PART 107
PROCEDURES

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107.601 Incorporation by Reference of 49 CFR 107, subpart G

107.APPENDIX A Standard Conditions Applicable to Exemptions, Packages, Containers, Shipments

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)] and Section 3-704(b) of the Illinois Vehicle Code [625 ILCS 5/3-704(b)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 3 Ill. Reg. 49, p. 273, effective December 10, 1979; amended at 6 Ill. Reg. 4287, effective April 16, 1982; codified at 8 Ill. Reg. 17979; amended at 10 Ill. Reg. 5876, effective April 1, 1986; amended at 14 Ill. Reg. 2633, effective February 1, 1990; amended at 14 Ill. Reg. 8189, effective May 15, 1990; amended at 18 Ill. Reg. 7881, effective May 6, 1994; amended at 20 Ill. Reg. 6554, effective April 30, 1996; amended at 22 Ill. Reg. 5708, effective March 4, 1998; amended at 22 Ill. Reg. 17023, effective September 30, 1998; amended at 25 Ill. Reg. 7298, effective May 19, 2001; amended at 26 Ill. Reg. 8919, effective June 5, 2002; amended at 28 Ill. Reg. 10066, effective July 1, 2004; amended at 29 Ill. Reg. 660, effective December 20, 2004.

SUBPART A: GENERAL PROVISIONS**Section 107.1 Purpose and Scope**

This Part defines certain terms and prescribes procedures that are applicable to each processing described in this Part that are utilized by the Department in carrying out its duties under the laws pertaining to the transportation of hazardous materials.

Section 107.3 Definitions

As used in this Part:

"Act" means the Illinois Hazardous Materials Transportation Act [430 ILCS 30].

"Acting knowingly" means acting or failing to act while having actual knowledge of the facts giving rise to the violation, or having the knowledge that a reasonable person acting in the same circumstances and exercising due care would have had. (49 CFR 107.1, October 1, 2003)

"Administrator" means the Administrator, Research and Special Programs Administration (RSPA), US Department of Transportation or his or her delegate. (49 CFR 107.1, October 1, 2003)

"Applicant" means the person in whose name an exemption, approval, registration, a renewed or modified exemption or approval, or party status to an exemption is requested to be issued. (49 CFR 107.1, October 1, 2003)

"Application" means a request under subpart B of 49 CFR 107 for an exemption, a renewal or modification of an exemption, party status to an exemption, or a request under subpart H of 49 CFR 107 for an approval, or renewal or modification of an approval. (49 CFR 107.1, October 1, 2003)

"Approval" means written consent, including a competent authority approval, from the Associate Administrator or other designated Department official, to perform a function that requires prior consent under subchapter C of 49 CFR Chapter I (49 CFR 171 through 180). (49 CFR 107.1, October 1, 2003)

"Approval Agency" means an organization or a person designated by the RSPA to certify packagings as having been designed, manufactured, tested, modified, marked or maintained in compliance with applicable DOT regulations. (49 CFR 107.1, October 1, 2003)

“Associate Administrator” means the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, US Department of Transportation. (49 CFR 107.1, October 1, 2003)

“Competent authority” means a national agency that is responsible, under its national law, for the control or regulation of some aspect of hazardous materials (dangerous goods) transportation. Another term for competent authority is “appropriate authority”, which is used in the International Civil Aviation Organization’s (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air. The Associate Administrator is the United States competent authority for purposes of 49 CFR 107. (49 CFR 107.1, October 1, 2003)

“Competent authority approval” means an approval by the competent authority that is required under an international standard (for example, the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air and the International Maritime Dangerous Goods Code). Any of the following may be considered a competent authority approval if it satisfies the requirement of an international standard:

A specific regulation in subchapter A or C of 49 CFR Chapter I.

An exemption or approval issued under subchapter A or C of 49 CFR Chapter I.

A separate document issued to one or more persons by the Associate Administrator. (49 CFR 107.1, October 1, 2003)

"Department" means the Illinois Department of Transportation.

"Director" means the Director of the Division of Traffic Safety.

"Division" means the Division of Traffic Safety.

"Enforcement" means issuance of warnings or notices of violation of any provision of the Act and the Illinois Hazardous Materials Transportation Regulations (IHMTR) and prosecution of violations of the IHMTR and the Act.

“Exemption” means a document issued by the Associate Administrator under the authority of 49 USC 5117. The document permits a person to perform a function that is not otherwise permitted under subchapter A or C of 49 CFR Chapter I, or other regulations issued under 49 USC 5101 through 5127 (e.g., Federal Motor Carrier Safety routing requirements) (49 CFR 107.1, October 1, 2003)

“Federal Hazardous Material Transportation Law” means 49 USC 5101 et seq. (49 CFR 107.1, October 1, 2003)

“Filed” means received by the appropriate RSPA or other designated office within the time specified in a regulation or rulemaking document. (49 CFR 107.1, October 1, 2003)

“Holder” means the person in whose name an exemption or approval has been issued. (49 CFR 107.1, October 1, 2003)

“Imminent hazard” means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion of an administrative hearing or other formal proceeding initiated to abate the risks of those effects. (49 CFR 107.1, October 1, 2003)

“Incident” means an event resulting in the unintended and unanticipated release of a hazardous material or an event meeting incident reporting requirements in 49 CFR 171.15 or 49 CFR 171.16. (49 CFR 107.1, October 1, 2003)

“Indian tribe” has the same meaning given that term in section 4 of the Indian Self-Determination and Education Assistance Act (25 USC 450b). (49 CFR 107.1, October 1, 2003)

"IHMTR" means the Illinois Hazardous Materials Transportation Regulations.

“Investigation” includes investigations authorized under 49 USC 5121 and inspections authorized under 49 USC 5118 and 5121. (49 CFR 107.1, October 1, 2003)

"Knowingly" (See the definition of “acting knowingly” in this Section.)

“Manufacturing exemption” means an exemption from compliance with specified requirements that otherwise must be met before representing, marking, certifying (including requalifying, inspecting, and testing), selling or offering a packaging or container as meeting the requirements of subchapter C of 49 CFR Chapter I governing its use in the transportation in commerce of a hazardous material. A manufacturing exemption is an exemption issued to a manufacturer of packagings who does not offer for transportation or transport hazardous materials in packagings subject to the exemption. (49 CFR 107.1, October 1, 2003)

“North American Uniform Out-Of-Service Criteria” means a set of guidelines recognized by all states and the provinces of Canada as acceptable standards for identifying critical violations that may render a driver, a commercial motor vehicle or a hazardous material load out-of-service. The criteria is enforced by law enforcement officers of a state or the federal government.

“Out-of-service order” means a declaration by the State Police that a hazardous material shipment is out-of-service pursuant to 92 Ill. Adm. Code 171.2(a), 171.2(b) or 171.2(c) and the North American Uniform Out-of-Service Criteria as defined in this Section.

“Party” means a person, other than a holder, authorized to act under the terms of an exemption. (49 CFR 107.1, October 1, 2003)

"Person" means an individual, firm, copartnership, corporation, company, association, or joint stock association (including any trustee, receiver, assignee, or similar representative); or a government or Indian tribe (or an agency or instrumentality of any government or Indian tribe) that transports a hazardous material to further a commercial enterprise or offers a hazardous material for transportation in commerce. Person does not include the following:

The United States Postal Service.

Any agency or instrumentality of the Federal government, for the purposes of 49 USC 5123 (civil penalties) and 5124 (criminal penalties).

Any government or Indian tribe (or agency or instrumentality of any government or Indian tribe) that transports hazardous material for a governmental purpose. (49 CFR 107.1, October 1, 2003)

“Registration” means a written acknowledgment from the Associate Administrator that a registrant is authorized to perform a function for which registration is required under subchapter C of 49 CFR Chapter I (e.g., registration in accordance with 49 CFR 178.503 regarding marking of packagings). For purposes of subparts A through E, “registration” does not include registration under subpart F or G of 49 CFR 107. (49 CFR 107.1, October 1, 2003)

“Report” means information, other than an application, registration or part thereof, required to be submitted to the Associate Administrator pursuant to subchapter A, subchapter B or subchapter C of 49 CFR Chapter I. (49 CFR 107.1, October 1, 2003)

"Respondent" means a person upon whom the Department has served a notice of probable violation.

"Secretary" means the Secretary of the Illinois Department of Transportation.

"State" means the State of Illinois.

"State Police" includes any individual officer of the Illinois State Police.

“Transports” or “transportation” means the movement of property and loading, unloading, or storage incidental to the movement. (49 CFR 107.1, October 1, 2003)

(Source: Amended at 28 Ill. Reg. 10066, effective July 1, 2004)

Section 107.5 Request for Confidential Treatment

- a) If any person filing a document with the Division claims that some or all the information contained in the document should be exempt from public disclosure, and if that person requests the Division not to disclose the information, that person shall file together with the document a second copy of the document from which has been deleted the information for which confidential treatment is claimed. The person shall indicate in the original document that it is confidential or contains confidential information and shall file a statement specifying the justification for which confidential treatment is claimed. If the person states that the information constitutes trade secrets or commercial or financial information, that person must include a statement as to why the information is privileged or confidential.
- b) The Division retains the right to make its own determination with regard to any claim of confidentiality. The determination of confidentiality will be based upon one or more of the following:
 - 1) The information submitted to the Division under paragraph (a);
 - 2) The applicable provisions of any State or Federal statute which requires the information to be kept confidential;
 - 3) Whether such information constitutes trade secrets or commercial or financial information;
 - 4) Whether the information should be kept confidential in view of ongoing compliance actions;
 - 5) Whether release of the information could commercially or personally harm any person. Notice of a decision by the Division to deny the claim, in whole or in part, and an opportunity to respond shall be given to any person claiming confidentiality of information, no less than five days prior to its public disclosure.

Section 107.11 Service

- a) Each order, notice, or other document required to be served under this Part shall be served personally or by registered or certified mail, except as otherwise provided.
- b) Service upon a person's duly authorized representative constitutes service upon that person.
- c) Service by registered or certified mail is complete upon mailing. An official United States Postal Service receipt from the registered or certified mailing constitutes prima facie evidence of service.

Section 107.13 Subpoenas

- a) The Secretary, or any individual whom he has designated to preside over a hearing convened in accordance with this Part, may sign and issue subpoenas either on his own initiative or, upon the request of any person participating in that proceeding where that person make an adequate showing that the information sought will materially advance the proceeding.
- b) A subpoena may require the attendance of a witness or the production of relevant documentary or other tangible evidence in the possession or under the control of the person served, or both.
- c) Service of a subpoena upon the person named therein shall be made by delivering a copy of the subpoena to such person. Delivery of a copy of a subpoena to a natural person may be made by handing it to the person, leaving it at his or her office with the person in charge thereof, leaving it at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein, or by mailing it by registered or certified mail to the person at the person's last known address. When the person to be served is not a natural person, delivery of a copy of the subpoena may be effected by handing it to a registered agent for service, or to any officer, director, or agent in charge of any office of the person, or by mailing it by registered or certified mail to that representative at his last known address.
- d) The original subpoena bearing a certificate of service shall be filed with the Department official having responsibility for the proceeding in connection with which the subpoena was issued.
- e) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, apply to the presiding officer who issued the subpoena, or if he is unavailable, to the Secretary, to quash or modify the

subpoena. The application shall contain a brief statement of the reasons relied upon in support of the action sought therein. The Secretary, or the presiding officer, as the case may be, may:

- 1) Deny the application;
 - 2) Quash or modify the subpoena; or
 - 3) Condition denial of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. The denial may be summary.
- f) If there is a refusal to obey a subpoena served upon any person under the provisions of this section, the Department may request the Attorney General to seek the aid of the Circuit Court or any court of competent jurisdiction in which the person is found, to compel that person, after notice, to appear and give testimony, or to appear and produce the subpoenaed documents before the Department, or both.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

SUBPART B: EXEMPTIONS

Section 107.101 Purpose and Scope (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.102 Persons Holding Federal Exemptions

Any valid exemption issued by the Secretary of the U. S. Department of Transportation under Section 107 of the federal Hazardous Materials Transportation Act (49 U.S.C. Section 1806) shall be considered a valid exemption issued under this subpart.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.103 Applications for Exemptions for Persons Transporting Hazardous Materials Not Governed by the Federal Hazardous Materials Regulations (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.105 Application for Renewal (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.107 Initial Application Review (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.109 Processing of Application (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.111 Party to an Exemption (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.117 Withdrawal (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.119 Termination (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.121 Appeal (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.123 Availability for Public Inspection (Repealed)

(Source: Repealed at 29 Ill. Reg. 660, effective December 20, 2004)

SUBPART D: ENFORCEMENT**Section 107.301 Responsibility for Enforcement**

In accordance with delegations of authority from the Secretary, responsibility for enforcement of this Subchapter is exercised by:

- a) The Department of Transportation;
- b) The Department of State Police; and
- c) Any other department or agency of State government which has jurisdiction with respect to the transportation of hazardous materials, with which the Secretary concludes an interagency agreement.

(Source: Amended at 14 Ill. Reg. 2633, effective February 1, 1990)

Section 107.303 Purpose and Scope

This subpart describes the various enforcement authorities exercised by the Department and the associated sanctions and prescribes the procedures governing the exercise of those authorities and the imposing of those sanctions.

Section 107.305 Investigations

- a) General. The Department may conduct investigations relating to compliance by any person with any provision of these regulations and any order issued thereunder, or any court decree relating thereto.
- b) Confidentiality. Information received in an investigation under this section, including the identify of the person investigated and any other person who provides information during the investigation, shall, unless otherwise determined by the Department, remain confidential.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.307 Inspections and Examination of Records and Properties

- a) Any representative of the State acting under delegation of authority in Section 107.301, upon presenting appropriate credentials, may enter without delay, inspect and examine the records and properties of any person to the extent such records and properties relate to the transportation or shipment of hazardous materials on the highways of this State. All such inspections and examinations shall be conducted during regular working hours and in a reasonable manner.
- b) If any person refuses to permit the representative to make an inspection or examination in accordance with Section 107.307(a), the representative shall terminate the inspection or confine the inspection to areas concerning which no objection is raised. The representative shall endeavor to ascertain the reason for such refusal and shall immediately report the matter to the Director. If the Director desires to have an inspection and examination conducted, he may refer the matter to the Department's Office of Chief Counsel to take appropriate action, including compulsory process, if necessary.

Section 107.308 Notice of Apparent Violations

- a) When any representative of the State acting under delegation of authority in Section 107.301 has reason to believe that a person is engaging in conduct which involves a violation of any provision of these regulations, or of any exemption under Subpart B, the representative shall issue a notice of apparent violation.
- b) A notice of apparent violation shall be issued:
 - 1) In the case of a violation observed at any location where hazardous materials are handled, to the person in charge of or responsible for the place or location who is present at the time the violation is observed and, if that person is not the owner or lessor of the place or location, to the owner or lessor of the place or location.
 - 2) In the case of a violation involving a motor vehicle intended to be used or being used for the transportation of hazardous materials, or in the case of a violation observed occurring in the course of the transportation of hazardous materials, to the driver or operator of the vehicle and to the employer of the driver or operator and, to the owner or lessor of the vehicle if the owner or lessor is a person other than the driver or operator or the employer of the driver or operator.
 - 3) In the case where an individual person is observed to be knowingly committing an act which is a violation or to have knowingly committed an act which is a violation of these regulations, to that individual person, and if applicable, to the employer of that person.
 - 4) In all other cases, to a responsible person present at the time the violation is observed, and if that person is not the owner or lessor of the place or location, to the owner or lessor of the place or location.
- c) The notice of apparent violation shall be served in accordance with Section 107.11.
- d) A copy of each notice of apparent violation issued shall be forwarded to the Director.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.309 Stopping of Vehicles

- a) The State Police shall stop any vehicle when the State Police has reason to believe that an imminent hazard exists. "Imminent hazard," as used in this section, exists if there is a likelihood that death, serious illness, or personal injury

will occur prior to the completion of a formal proceeding initiated to abate the risk of such harm.

- b) If the State Police stop a vehicle pursuant to 92 Ill. Adm. Code 171.2(c), the State Police shall prevent the further movement of the hazardous materials and shall tag the vehicle carrying the hazardous material so as to place the vehicle out of service until such time as the imminent danger observed is abated.
- c) Whenever the State Police stop and inspect any motor vehicle for any violation of the Act or IHMTR and identify violations that trigger placing the hazardous material shipment out-of-service under the “North American Uniform Out-of-Service Criteria,” the State Police shall prevent the further movement of the hazardous material and shall issue an out-of-service order by tagging the hazardous material shipment so as to place it out-of-service until such time as the unsafe condition is corrected and the shipment complies with the IHMTR. North American Uniform Hazardous Materials Out-of-Service Criteria include, but are not limited to:
 - 1) Transporting hazardous materials not accompanied by a shipping paper that indicates hazardous materials are being transported;
 - 2) Fifty percent or more of the required placards for a hazard class are missing or any placards misrepresent the hazardous materials being transported;
 - 3) Transporting hazardous materials in a bulk packaging not authorized for the material being transported; and
 - 4) Hazardous materials leaking from a package. (North American Uniform Out-of-Service Criteria, Commercial Vehicle Safety Alliance Operations Manual, April 1, 1998)
- d) Whenever the State Police stop a vehicle and the driver or operator of the vehicle is able to properly abate the existing danger, the vehicle shall be permitted to continue in service; however, the State Police shall notify the Director of the matter and the Director shall notify the employer of the driver or operator and the owner or lessor of the vehicle if the owner or lessor is not the employer.

(Source: Amended at 22 Ill. Reg. 5708, effective March 4, 1998)

Section 107.310 Department Review of Notice of Apparent Violation

Upon receiving a copy of a notice of apparent violation, the Department shall review the notice and determine whether any further administrative action is required. If the Department determines that further administrative action is required, the Department may take any administrative action set forth in this subpart it believes is appropriate.

(Source: Amended at 14 Ill. Reg. 2633, effective February 1, 1990)

Section 107.311 Warning Letter

- a) When the Department has reason to believe that a person is engaging in conduct which involves a violation of any provision of these regulations, the Director, or his authorized representative, may issue a warning letter which shall:
 - 1) Advise the person of the time, place and circumstances of the apparent violation;
 - 2) Advise the person that a subsequent inspection may be conducted to ascertain whether the violation has been corrected; and
 - 3) Warn the person not to repeat the violation in the future.
- b) The warning letter shall be served in the manner prescribed in Section 107.11.

(Source: Amended at 14 Ill. Reg. 8189, effective May 15, 1990)

Section 107.313 Civil Penalties Generally

When the Department has reason to believe that a person has knowingly committed an act which is a violation of any provision of these regulations it may conduct proceedings to assess and, if appropriate, compromise a civil penalty.

Section 107.314 Maximum Penalties

A person who knowingly commits an act that is a violation of any of these regulations is liable for a civil penalty of not more than \$10,000 for each violation. When the violation is a continuing one, each day of the violation constitutes a separate offense.

Section 107.315 Commencement of Civil Penalty Proceeding

- a) The Department, by the Director or his authorized representative, begins a civil penalty proceeding by serving a Notice of Intent to Assess Civil Monetary Penalty, in accordance with Section 107.11, on a person charging that person

with having knowingly committed an act which is a violation of one or more provisions of the IHMTR.

- b) A Notice of Intent to Assess Civil Monetary Penalty issued under this Section shall include:
- 1) Notice of the provisions(s) of the IHMTR or settlement agreement which the respondent is believed to have violated;
 - 2) A brief description of the manner in which the respondent is believed to have violated the IHMTR or settlement agreement.
 - 3) Notice of the maximum amount of civil penalty for which the respondent may be liable;
 - 4) Notice of the amount of the civil penalty sought to be assessed by the Department; pursuant to 92 Ill. Adm. Code 401;
 - 5) A description of the manner in which the respondent shall make payment in accordance with Section 107.317 of any money to the State;
 - 6) A statement that the respondent may request a conference with the Department, by verbal or written request to the Director, to review and discuss the alleged violation and civil penalty, and of the procedures for requesting a conference;
 - 7) A statement that if a settlement cannot be reached within 90 days, a Notice of Probable Violation will be served upon the respondent, and the respondent will have an opportunity for a hearing as provided by Section 11 of the Act and the IHMTR;
 - 8) A statement that if the respondent does not reply to the Notice of Intent to Assess Civil Monetary Penalty within 30 days after its service upon the respondent, the failure of the respondent to reply constitutes a waiver of its right to appear and contest the allegations, without further notice to the respondent, and authorizes the Secretary, without further notice to the respondent, to find the facts to be as alleged in the Notice of Intent to Assess Civil Monetary Penalty and order the assessment of the civil penalty stated in the Notice; and
 - 9) A statement that respondent's failure to pay a civil monetary penalty as ordered by the Secretary may result in revocation or suspension by the Illinois Secretary of State of the registration of vehicles either owned by

the respondent or, regardless of ownership, that were the subject of violations by the respondent of the Illinois Hazardous Materials Transportation Regulations, pursuant to 625 ILCS 5/3-704(b).

- c) In the event that the Department and the respondent do not enter a settlement agreement following service of a Notice of Intent to Assess Civil Monetary Penalty, the Department by the Director shall serve a Notice of Probable Violation on the respondent.
- d) A Notice of Probable Violation issued under this Section includes:
 - 1) A statement of the provision(s) of the IHMTR or of a settlement agreement which the respondent is believed to have violated;
 - 2) A statement of the factual allegations upon which the proposed civil penalty is being sought;
 - 3) Notice of the maximum amount of civil penalty for which the respondent may be liable;
 - 4) Notice of the amount of the civil penalty sought to be assessed by the Department;
 - 5) A description of the manner in which the respondent shall make payment of any money to the State in accordance with Section 107.317;
 - 6) A statement of respondent's right to request a hearing and the procedures for requesting a hearing in accordance with Section 107.318; and
 - 7) A statement of respondent's right to appear at the hearing and to present relevant written or oral explanations, information and materials in answer to the allegations or in mitigation of the penalty.
- e) A settlement of a civil penalty proceeding may be effectuated at any time upon agreement of the parties, shall be reduced to writing by the Department and signed by the parties. Terms of the settlement may include a reduction in the amount of the proposed civil penalty, and may include training and procedural requirements agreed upon by the respondent and Department. Training and procedural requirements may be agreed upon to increase awareness of and compliance with 92 Ill. Adm. Code 107 through 180, and 397, and those portions of 49 CFR adopted by reference.

(Source: Amended at 26 Ill. Reg. 8919, effective June 5, 2002)

Section 107.316 Reply

- a) Within 30 days of the service of a notice of probable violation issued under Section 107.315, the respondent may:
 - 1) Pay the preliminary assessment as provided in Section 107.317(a) and thereby close the case; or
 - 2) Request a hearing as provided in Section 107.318.
- b) The Director may extend the 30-day period for good cause shown.
- c) Failure of the respondent to reply by taking one of the two actions described in paragraph (a) of this section within the period provided constitutes a waiver of his right to appear and contest the allegations, and authorized the Secretary, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and order the assessment of an appropriate civil penalty. The assessment shall be the same as the assessment stated in the notice when the respondent fails to reply.
- d) An order entered against a respondent who fails to reply may be vacated by the Secretary upon good cause shown in a written motion filed within 30 days of service of the order.

A motion to vacate must be accompanied by a request for hearing meeting the requirements of Section 107.318. No further extension of this time for filing shall be granted.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.317 Payment of Penalty

- a) Payment of a civil penalty should be made by certified check or money order payable to the Treasurer of the State of Illinois and sent to the Director, Division of Traffic Safety, Illinois Department of Transportation, 3215 Executive Park Drive, P. O. Box 19212, Springfield, Illinois 62794-9212.
- b) At any time after an order assessing a civil penalty is referred to the Attorney General for collection, the respondent may offer to compromise for a specific amount by submitting a certified check or money order for that amount to the Director who, with the consent of the Attorney General, may accept or reject

it. If it is accepted, the respondent is notified in writing by the Director that the acceptance is in full settlement of the civil penalty for the violation.

(Source: Amended at 18 Ill. Reg. 7881, effective May 6, 1994)

Section 107.318 Request for Hearing

- a) If the respondent elects to request a hearing, he shall submit a written request to the Director. The request must:
 - 1) State the name and address of the respondent and of the person signing the request if different from the respondent;
 - 2) State with respect to each allegation whether it is admitted or denied; and
 - 3) State with particularity the issues to be raised by the respondent at the hearing.
- b) After receiving a request for hearing which complies with the requirements of paragraph (a) of this section, the Director shall request the Secretary to appoint a presiding officer. The designated presiding officer schedules a hearing for the earliest practicable date.
- c) The presiding officer may grant extensions of the time of the commencement of the hearing for good cause shown.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.319 Hearing

- a) When a hearing is requested under Section 107.318, the Secretary shall appoint a presiding officer to convene and preside over the hearing. To the extent practicable, the hearing will be held near the place where the alleged violation occurred or at a place convenient to the respondent; provided that all such hearings shall be in Illinois. Testimony by witness shall be given under oath and the hearing shall be recorded verbatim.
- b) The presiding officer may:
 - 1) Administer oaths and affirmations;
 - 2) Issue subpoenas as provided by Section 107.13;

- 3) Adopt procedures, including the submission of evidence in written form;
 - 4) Take or cause depositions to be taken;
 - 5) Rule on offers of proof and receive relevant evidence;
 - 6) Examine witnesses at the hearing;
 - 7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;
 - 8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and
 - 9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to civil penalties and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.
- c) The Director, or his representative, has the burden of proving the facts alleged in the notice of probable violation as may be necessary to fully inform the presiding officer as to the matter concerned.
- d) The respondent may appear and be heard on his own behalf or through counsel of his choice. The respondent or his counsel may offer relevant information including testimony which he believes should be considered in defense of the allegations or which may bear on the penalty to be assessed and conduct such cross-examination as may be required for a full disclosure of the facts.

(Source: Amended at 3 Ill. Reg. 49, p. 273 effective December 10, 1979)

Section 107.320 Presiding Officer's Decision

- a) After consideration of the evidence of record, the presiding officer may dismiss the notice of probable violation in whole or in part. If he does not dismiss it in whole, he will issue and serve on the respondent an order assessing a civil penalty. The order will include a statement of findings and conclusions as well as the reasons therefor on all material issues of fact, law, and discretion.
- b) If, within 20 days after service of an order assessing a civil penalty, the respondent does not pay the civil penalty or file an appeal as provided in Section 107.323(a), the case shall be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate Circuit Court.

Section 107.321 Assessment Considerations

In assessing a civil penalty under Section 107.320, the assessment is made only after considering:

- a) The nature and circumstances of the violation;
- b) The extent and gravity of the violation;
- c) The degree of the respondent's culpability;
- d) The respondent's history of prior offenses;
- e) The respondent's ability to pay;
- f) The effect on the respondent's ability to continue in business; and
- g) Such other matters as justice may require.

Section 107.323 Appeal

- a) Orders of dismissal and orders assessing civil penalties may be appealed to the Secretary. An appeal must be filed within 20 days of service of the presiding officer's order.
- b) The decision of the Secretary on appeal shall be made on the record of the hearing, including all pleadings and the decision of the officer who presided at the hearing. No new or additional evidence shall be considered by the Secretary without a positive showing by the party presenting such evidence that the evidence was not available or, through due diligence, could not have been made available at the hearing. At the discretion of the Secretary and upon reasonable notice of the parties oral argument may be had on appeal. Any party requesting oral argument must detail in his petition for appeal the reasons for the request for argument.
- c) If the Secretary affirms the assessment and the respondent does not pay the civil penalty within 35 days after service of the Secretary's decision on appeal and no complaint for administrative review has been filed, the case shall be referred to the Attorney General with a request that an action to collect the penalty be brought in the appropriate Circuit Court.
- d) Petition for appeal shall detail the assailed findings and be confined to factual and legal issues which are essential to the ultimate and just determination of the

proceeding. Petitions shall not exceed 10 pages in length, excluding a separate preface and summary of argument which shall not exceed 3 pages. A reply to the petition, if any, shall be filed within 20 days of receipt of the petition for appeal and shall meet the same requirements as to length and format.

- e) The filing of the petition shall stay the effect of the prior decision, order or requirement pending the determination of the appeal.

(Source: Amended at 3 Ill. Reg. 49, p. 273, effective December 10, 1979)

Section 107.324 Failure to Pay Civil Penalty

- a) Failure of the respondent to pay all or a portion of a civil penalty under Section 107.315(b)(8), Section 107.316(c), or Section 107.320 or a settlement agreement under Section 107.315(e) or Section 107.317(b) will result in the Department, without further notice to the respondent, notifying the Illinois Secretary of State in writing or by electronic communication, no sooner than 30 days and no more than 40 days after that failure to pay, that respondent has not paid a civil penalty or a settlement agreement arising from a violation of the IHMTR. The Illinois Secretary of State may then suspend or revoke the registration of vehicles that are owned by the respondent or, regardless of ownership, that were the subject of violations of the IHMTR for which a civil penalty or settlement agreement remains unpaid.
- b) An order to pay a civil penalty or a settlement agreement will include a provision that failure to pay all or a portion of the civil monetary penalty or settlement agreement will result in the Department, without further notice to respondent, notifying the Illinois Secretary of State that the respondent has not paid a civil penalty or a settlement agreement arising from a violation of the IHMTR and that the Illinois Secretary of State may then suspend or revoke the registration of vehicles that are owned by respondent or, regardless of ownership, that were the subject of violations of the IHMTR for which a civil penalty or settlement agreement remains unpaid.
- c) Within three business days after the respondent paying a civil penalty or settlement agreement that was the subject of a notice to the Illinois Secretary of State under subsection (a) of this Section, the Department will notify the Secretary of State that the civil penalty or settlement agreement has been paid.

(Source: Added at 26 Ill. Reg. 8919, effective June 5, 2002)

Section 107.331 Compliance Orders Generally

When the Department has reason to believe that a person is engaging in conduct which involves a violation of any provision of these regulations, the Department may conduct proceedings to determine the nature and extent of the violation and may thereafter issue an order directing compliance.

Section 107.333 Notice of Probable Violation

- a) The Department by the Director begins a compliance order proceeding by serving a notice of probable violation on a person charging that person with violating one or more provisions of these regulations.
- b) A notice of probable violation issued under this section includes:
 - 1) A statement of the provision(s) of the regulations which the respondent is believed to be violating;
 - 2) A statement of the factual allegation upon which remedial action is being sought; and
 - 3) A statement of the remedial action being sought in the form of a proposed compliance order.
- c) The Department may amend a notice of probable violation issued under this section at any time before the entry of a final compliance order. If an amendment includes any new material allegation of fact or seeks new or additional remedial action, the respondent is given an opportunity to respond. (Filed 11-28-79, effective 12-10-79)

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.334 Reply

- a) Within 30 days of the service of a notice of probable violation issued under Section 107.333, the respondent may file a reply with the Director. The Director may extend the 30-day period for good cause shown.
- b) The reply must be in writing, signed by the person filing it, and state with respect to each factual allegation whether it is admitted or denied. Even though formally denied, a factual allegation set forth in a notice of probable violation is considered to be admitted for purposes of the proceeding unless:

- 1) Opposed by the written statement of an individual having personal knowledge of the subject matter;
 - 2) Challenged as being in error together with a supporting explanation as to why it is believed to be in error; or
 - 3) Otherwise contested or contradicted through the submission of relevant evidence.
- c) The reply must set forth any defenses and include a statement of the form and nature of proof by which those defenses are to be established.
- d) If it is necessary to respond to an amendment to the notice of probable violation, the respondent may amend his reply at any time before the issuance of an order under Section 107.337.
- e) If the respondent elects not to contest one or more factual allegations, he should so state in the reply. An election not to contest a factual allegation is an admission of that allegation solely for the purpose of issuing a compliance order and constitutes a waiver of hearing as to that allegation but does not, by itself, constitute a waiver of the right to be heard on other issues. In connection with a statement of election not to contest a factual allegation, the respondent, may propose an appropriate order for issuance by the Director, or propose the negotiation of a consent order.
- f) Failure of the respondent to file a reply within the period provided constitutes a waiver of his right to appear and contest the allegation and authorizes the Secretary, without further notice to the respondent, to find the facts to be as alleged in the notice of probable violation and to issue an appropriate order directing compliance.

(Source: Amended at 3 Ill. Reg. 49, p. 273, effective December 10, 1979)

Section 107.335 Consent Order

- a) At any time before the issuance of an order under Section 107.337, the Department and the respondent may execute an agreement for disposing of the case by the entry of a consent order. If the Director accepts the agreement, he issues an order in accordance with its terms. If the Director rejects the agreement, he directs that the proceeding continue.
- b) An agreement submitted to the Director under this section must include:

- 1) A proposed compliance order suitable for the Director's signature;
- 2) An admission of all jurisdictional facts;
- 3) An express waiver of further procedural steps and of all right to seek judicial review or otherwise challenge or contest the validity of the order; and
- 4) An acknowledgment that the notice of probable violation may be used to construe the terms of the order.

Section 107.336 Hearing

- a) When a respondent files a reply contesting allegations in a notice of probable violation issued under Section 107.333 or when the Department and the respondent fail to agree upon an acceptable consent order, the Director shall request the Secretary to appoint a presiding officer. The Secretary shall appoint a presiding officer to convene and preside over a hearing on the proposed compliance order. Testimony by witnesses shall be given under oath and the hearing shall be recorded verbatim.
- b) The presiding officer may:
 - 1) Administer oaths and affirmations;
 - 2) Issue subpoenas as provided by Section 107.13;
 - 3) Adopt procedures, including the submission of evidence in written form;
 - 4) Take or cause depositions to be taken;
 - 5) Rule on offers of proof and receive relevant evidence;
 - 6) Examine witnesses at the hearing;
 - 7) Convene, recess, reconvene, adjourn and otherwise regulate the course of the hearing;
 - 8) Hold conferences for settlement, simplification of the issues or any other proper purpose; and

- 9) Take any other action authorized by or consistent with the provisions of this subpart pertaining to compliance orders and permitted by law which may expedite the hearing or aid in the disposition of an issue raised therein.
- c) The Director, or his representative, has the burden of proving the facts alleged in the notice of probable violation and may offer such relevant information as may be necessary to fully inform the presiding officer as to the matter concerned.
- d) The respondent may appear and be heard on his own behalf or through counsel of his choice. The respondent or his counsel may offer relevant information including testimony which he believes should be considered in defense of the allegations or which may bear on the remedial action being sought and conduct such cross-examination as may be required for a full disclosure of the facts.

(Source: Amended at 3 Ill. Reg. 49, p. 273, effective December 10, 1979)

Section 107.337 Presiding Officer's Decision

- a) After consideration of evidence, the presiding officer may dismiss the notice of probable violation or issue an order directing compliance. The order will include a statement of findings and conclusions as well as the reasons therefore on all material issues of fact, law, and discretion.
- b) A compliance order issued under this section is effective upon service on the respondent unless otherwise provided therein.

Section 107.338 Compliance Order For Immediate Compliance

- a) Notwithstanding Sections 107.333 through Section 107.337, the Director may issue a compliance order for immediate compliance, which is effective upon issuance, and until rescinded or suspended, if he finds:
 - 1) There is strong probability that a violation is occurring or is about to occur;
 - 2) The violation poses an unreasonable risk to health or to safety of life or property; and
 - 3) The public interest requires the avoidance or amelioration of that unreasonable risk through immediate compliance and waiver of the procedures afforded under Section 107.333 through Section 107.337.

- b) A compliance order for immediate compliance is served promptly upon the person against whom the order is issued by telex or telegram, with a copy served in the manner provided in Section 107.11. The copy contains a written statement of the relevant facts and the legal basis for the order, including the findings required by paragraph (a) of this Section.
- c) The Director may rescind or suspend a compliance order for immediate compliance if it appears that the criteria set forth in paragraph (a) of this section are no longer satisfied. When appropriate, however, such a suspension or rescission may be accompanied by a notice of probable violation issued under Section 107.333.
- d) If at any time in the course of a proceeding commenced by a notice of probable violation the criteria set forth in paragraph (a) of this section are satisfied, the Director may issue a compliance order for immediate compliance, even if the 30-day period for reply specified in Section 107.334(a) has not expired.
- e) At any time after a compliance order for immediate compliance has become effective, the Secretary may request the Attorney General to bring an action for appropriate relief in accordance with Section 107.341.
- f) The Director shall commence a compliance order proceeding as soon as practicable after the issuance of a compliance order for immediate compliance.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.339 Appeal

- a) Orders of dismissal and orders directing compliance may be appealed to the Secretary. An appeal must be filed within 20 days after service of the compliance order.
- b) The decision of the Secretary on appeal shall be made on the record of the hearing, including all pleadings and the decision of the officer who presided at the hearing. No additional evidence shall be considered by the Secretary without a positive showing by the party presenting such evidence that the evidence was not available or, through due diligence, could not have been made available at the hearing. At the discretion of the Secretary and upon reasonable notice to the parties oral argument may be had on appeal. Any party requesting oral argument must detail in his petition for appeal the reasons for the request for argument.

- c) The Secretary may stay the effectiveness of an order where the equities so require. The filing of an appeal does not stay the effectiveness of the order unless the Secretary expressly so provides.
- d) Petition for appeal shall detail the assailed findings and be confined to factual and legal issues which are essential to the ultimate and just determination of the proceeding. Petitions shall not exceed 10 pages in length, excluding a separate preface and summary of argument which shall not exceed 3 pages. A reply to the petition, if any, shall be filed within 20 days of receipt of the petition for appeal and shall meet the same requirements as to length and format.

(Source: Amended at 3 Ill. Reg. 49, effective December 10, 1979)

Section 107.341 Injunctions and Other Equitable Relief

Whenever it appears to the Department that a person has engaged, is engaged, or is about to engage in any act or practice constituting a violation of any provision of these regulations or of any order issued thereunder, the Secretary may request the Attorney General to bring an action in the appropriate Circuit Court for such relief as is necessary, including mandatory or prohibitive injunctive relief, and interim equitable relief.

(Source: Amended at 6 Ill. Reg. 4287, effective April 16, 1982)

Section 107.343 Imminent Hazards

Whenever it appears to the Department that there is a substantial likelihood that death, serious illness, or severe personal injury will result from the transportation of a particular hazardous material before a compliance order proceeding or other administrative hearing or formal proceeding to abate the risk of that harm can be completed, the Department shall, through the Attorney General or State's Attorney, bring an action in the appropriate Circuit Court for an order suspending or restricting the transportation of that hazardous material, or for such other equitable relief as is necessary or appropriate to ameliorate the hazard as provided in Section 13 of the Act.

Section 107.371 Criminal Penalties Generally

Section 12 of the Act provides a criminal penalty of a fine of not more than \$25,000 for any person who willfully violates a provision of the Act or a regulation issued under the Act.

Section 107.373 Referral for Prosecution

If the Department becomes aware of a possible willful violation of the Act, or any provision of the regulations, the Department reports it to the Department's Office of Chief Counsel. If

appropriate, the Chief Counsel refers the report to the Attorney General or State's Attorney for criminal prosecution of the offender.

SUBPART E: REGISTRATION OF PERSONS WHO OFFER OR TRANSPORT HAZARDOUS MATERIALS

Section 107.601 Incorporation by Reference of 49 CFR 107, subpart G

- a) 49 CFR 107, subpart G is hereby incorporated by reference as that subpart of the Hazardous Materials Transportation Regulations was in effect on October 1, 2004. No later amendments to or editions of 49 CFR 107, subpart G are incorporated.
- b) The following interpretations of, additions to and deletions from 49 CFR 107, subpart G shall apply for the purposes of this Subpart.
 - 1) Any reference to "this part" in the incorporated material shall mean 92 Ill. Adm. Code 107.
 - 2) Any reference to "this chapter" or "this subchapter" in the incorporated material shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
 - 3) Any reference to a section in the incorporated material shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.

(Source: Amended at 29 Ill. Reg. 660, effective December 20, 2004)

Section 107.APPENDIX A Standard Conditions Applicable to Exemptions, Packages, Containers, Shipments

Exemptions from the regulations governing packages, containers, and the preparation and offering of hazardous materials for shipment are subject to the following conditions:

- 1) The outside of each package must be plainly and durably marked "DOT-E" followed by the exemption number assigned. On portable tanks, cargo tanks and tank car tanks, the markings must be in letters at least two inches high on a contrasting background.
- 2) Each shipping paper issued in connection with a shipment made under an exemption must, in association with the entries required by 92 Ill. Adm. Code 172.203(a), bear the notation "DOT-E" followed by the exemption number assigned.

- 3) When an exemption issued to a shipper contains special carrier requirements, the shipper shall furnish a copy of the exemption to the carrier before or at the time a shipment is tendered.

(Source: Amended at 26 Ill. Reg. 8919, effective June 5, 2002)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 108
HAZARDOUS MATERIALS CIVIL MONEY PENALTY POLICY

Section

108.10 Hazardous Materials Civil Money Penalty Policy

APPENDIX A Guidelines For the Assessment of Civil Money Penalties Under the Illinois
Hazardous Transportation Act and Regulations

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois
Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)]

SOURCE: Adopted at 4 Ill. Reg. 15, p. 240, effective April 1, 1980; codified at 8 Ill. Reg.
18934; recodified from 92 Ill. Adm. Code 401 at 14 Ill. Reg. 3234.

Section 108.10 Hazardous Materials Civil Money Penalty Policy

- a) For purposes of issuing a Notice of Probable Violation under Section 107.315 of the Illinois Hazardous Materials Transportation Regulations (92 Ill. Adm. Code 107.315) commencing a civil money penalty proceeding pursuant to Section 11 of the Illinois Hazardous Materials Transportation Act [430 ILCS 30], the Illinois Department of Transportation (“Department”) will be guided by the policy contained in Appendix A of this Part in determining the amount of the civil money penalty which the Department will seek to have assessed against a violator of that Act and those Regulations.
- b) The policy shall apply only to the initial discretionary determination by the Department of the civil money penalty which the Department intends to pay for in the Notice of Probable Violation which the Department issues to commence a civil money penalty proceeding against a violator. If a hearing is necessary, the amount of any civil money penalty assessed by order of the presiding officer or the Secretary of the Department may be greater than, less than or equal to the amount of the civil money penalty requested by the Department in its Notice of Probable Violation.

**Section 108.APPENDIX A Guidelines For the Assessment of Civil Money Penalties
Under the Illinois Hazardous Materials Transportation Act and Regulations**

Regulations were adopted by the Illinois Department of Transportation on February 1, 1979, implementing the Illinois Hazardous Materials Transportation Act, (Public Act 80-351) [430 ILCS 30] ("IHMTA"), to protect the People of the State of Illinois against the risk to life and property inherent in the transportation of hazardous materials over highways in Illinois by keeping such risk to a minimum consistent with technical feasibility and economic reasonableness.

Section 11 of the IHMTA provides that any person who knowingly commits an act that violates the IHMTA or any regulation issued pursuant to the Act is liable to the State for a civil penalty of not more than \$10,000 for such violation, and if the violation is a continuing one, each day of violation constitutes a separate offense.

Section 11 of the IHMTA authorizes the Department to assess the amount of any such penalty up to the stated maximum by written notice after reasonable notice and opportunity for a fair and impartial hearing. In determining the amount of the penalty the IHMTA directs the Department to:

. take into account the nature, circumstances, extent and gravity of the violation and, with respect to a person found to have committed such violation, the degree of culpability, history or prior offenses, ability to pay, effect on ability to continue to do business and such other matters as justice may require.

Subpart D of Part 107 of the Illinois Hazardous Materials Transportation Regulations (92 Ill. Adm. Code 107), now in force and effect, describes the various enforcement authorities exercised by the Department and their associated sanctions and prescribes the procedures governing the exercise of those authorities and the imposing of those sanctions. Sections 107.313 through 107.323 set forth the Department's enforcement procedures for the assessment of civil money penalties.

The regulations do not address the policy and procedures to be utilized by the Department to determine the civil money penalty which it will seek to impose for violations of the Act and the regulations. This statement sets forth the civil money penalty policy which the Department will apply in determining, for purposes of issuing a Notice of Probable Violation, the amount of the civil money penalty which the Department will seek to have assessed against a violator of the Act and the regulations.

It should be noted that this civil money penalty policy applies only to the initial determination by the Department of the money relief which it intends to pray for in the Notice of Probable Violation which the Department issued to commence a civil money penalty proceeding against a violation. If a hearing is necessary, the amount of any civil money penalty assessed by order of the hearing officer may be independent of the guidelines set forth herein. Such civil money penalty assessed by order of the hearing officer may be greater than, less than or equal to the amount of the civil money penalty requested by the Department in its Notice of Probable Violation.

INTRODUCTION

There has been much discussion by the courts and legal commentators about the administrative prescription and imposition of civil money penalties. It appears well established, however, that the legislature may, by law, impose appropriate obligations and may encourage their enforcement by reasonable money penalties. The legislature may also, by law, grant to an administrative agency the power to prescribe such penalties and impose them in individual cases without the necessity of invoking the judicial process.

One of the major objections to giving an administrative agency the discretion to impose money penalties is that the money penalties will be imposed in an arbitrary or capricious manner.

In response to this concern, judicial decisions on the exercise of discretionary powers by administrative agencies have required that the legislature provide some guidelines to the considerations that should be weighed by the administrative agency; that, as a matter of fairness (due process), notice and an opportunity for a hearing should precede the imposition of the penalty; and that there be an opportunity for judicial review. If these requirements are fulfilled, there appear to be no significant constitutional impediments to the administrative imposition of money penalties.

The Illinois Hazardous Materials Transportation Act (“IHMTA”) delegates to the Department of Transportation the authority to prescribe and impose civil monetary penalties. Section 11 of IHMTA prescribes:

1. What act is to be penalized – a knowing commission of an act that is in violation of the IHMTA or any rule or regulation issued thereunder (this would, of course, include omissions where the IHMTA or any rule or regulation require an affirmative act to be done);
2. Who is subject to the penalty – any person who transports or ships or causes to be transported or shipped hazardous materials;

3. What is the penalty – not more than \$10,000 for a violation and if any violation is a continuing one, each day of violation constitutes a separate offense;
4. How is the penalty to be imposed – after reasonable notice and opportunity for a fair and impartial hearing; in writing; and taking into account the nature, circumstances, extent and gravity of the violation; the degree of culpability of the violator; the violator's history of prior offenses; the violator's ability to pay; the effect of the penalty on the violator's ability to continue to do business and such other matters as justice may require;
5. Judicial review is provided under the Administrative Review Law (Ill. Rev. Stat. 1981, ch. 110, pars. 3-101 et seq.)

These are adequate standards and safeguards imposed on the powers given the Department. Also, the power to impose civil money penalties is reasonably necessary to accomplish the legislative purpose.

Similar statutory frameworks can be found in the federal statutes, such as the federal Hazardous Materials Transportation Act (49 U.S.C. 1801), Water Pollution Control Act (33 U.S.C. 1151), Occupational Safety and Health Act (29 U.S.C. 651), and the Motor Vehicle Safety Act (15 U.S.C. generally).

PURPOSE OF THE CIVIL MONEY PENALTY

The objective of the civil money penalty is to assist in accomplishing the goals of the Illinois Hazardous Materials Transportation Act by deterring violations and encouraging voluntary compliance. Punitive considerations are secondary.

When a carrier or shipper complies with the IHMTA, he faces an investment of resources as well as, in many instances, a long term commitment to the payment of operation and maintenance expenses. For example, personnel handling hazardous materials must be trained; labels and placards must be purchased; the proper packaging must be acquired; tank containers must be periodically tested; required paperwork must be done. While complying with the regulations will lead to protecting against the risk to life and property inherent in the transportation of hazardous materials, compliance may not necessarily yield any direct short term economic benefit to the shipper or carrier. If financial resources were not used to comply with the Hazardous Material laws, they presumably would be invested in a manner which would be economically beneficial to the shipper or carrier. Therefore, from a strictly economic point of view, a shipper or carrier may perceive it to be in his best interest to delay the commitment of funds for compliance.

This short-term economic advantage to the non-complying shipper or carrier often creates an incentive to delay compliance. The civil money penalty serves to reduce this incentive.

In addition, the civil money penalty is an effective tool for reducing the harm or risk of harm to the public health and safety caused by non-compliance with the Hazardous Materials laws. By holding shippers or carriers liable for the costs of these risks, a money penalty encourages shippers and carriers to comply with the law.

The civil money penalty policy established by this memorandum is designed to assure fair and uniform money penalties. It is based on the statutory considerations set forth in Section 11 of the IHMTA.

It must be emphasized that this civil money penalty policy is for determining what money penalties the Department will seek when civil actions are taken. It is not a policy to determine which enforcement actions should be taken.

OTHER CIVIL MONEY PENALTY POLICIES

As the basis for recommending a civil money penalty policy, the Department reviewed civil money penalty enforcement mechanisms used by other agencies under related regulatory schemes. Several examples reviewed are illustrative.

The policies of the Materials Transportation Bureau of the federal Department of Transportation do not provide much guidance. At this time, they have no systematic mechanism for determining penalty amounts or for assuring consistency among cases over time.

The federal Environmental Protection Agency has a complex and quite technical policy for assessments of civil money penalties against major source violators of the Clean Air Act (42 U.S.C. 7401 et seq.) and Clean Water Act (33 U.S.C. 1251 et seq.). Since the EPA policy is directed at enforcement of pollution control equipment requirements, the EPA policy is structured solely to calculate and eliminate the economic benefits to a non-complying source. Adopting this policy to the Department's hazardous materials program was considered unworkable since a strictly economic disincentive policy based on calculating the economic benefits of non-compliance is not easily adaptable to, and may not be realistically appropriate for, the hazardous materials program.

The federal EPA employs a different type of civil penalty mechanism for enforcing its regulations respecting availability of unleaded gasoline. This penalty mechanism establishes a matrix-type procedure for determining a proper penalty in accordance with statutorily mandated criteria – again very similar to those in Section 11 of the IHMTA – which are required to form the basis for the USEPA penalty. USEPA has established a table which classifies, in a fixed

number of categories, the possible violations by their potential for causing the harm for which the EPA's law is intended to protect. Each class of violation is then fed through a matrix which adjusts the type of violation by the history of the violator's similar violations and again by the size of the violator's business. The result is a separate penalty assessment schedule – one for each class of violations – which sets out a dollar value or range of values depending on the violator's history of performance and the size of the violator's business. This penalty mechanism provides an unadjusted penalty arrived at in an objective manner (i.e., application of the matrix), which unadjusted penalty may be adjusted in a subjective manner based on consideration of the mitigating criteria mandated by EPA's statute. This type of penalty mechanism was considered as possibly appropriate and workable for the hazardous materials program.

THE CIVIL MONEY PENALTY POLICY

After reviewing several different possible penalty assessment structures, the Department established a civil money penalty mechanism which it believes will be effective and appropriate. This mechanism provides for consideration of the statutory criteria, provides a basis for consistency and leaves room for flexibility in applying what are really subjective factors.

The penalty mechanism is consistent with a proper exercise by the Department of its discretionary authority. The Department is free to exercise the discretion vested in it to determine the weight to be assigned to each of the criteria dictated by the legislature.

The penalty to be assessed will be determined first by a purely objective procedure of using the assessment formula. Although the Department used its discretion in creating the assessment formula, the use of the formula eliminates the arbitrary exercise of discretion by the Department. The factors composing the penalty formula have been established and the appropriate penalty amount has been assigned to each. The assessment formula yields an unadjusted initial penalty. If there are no factors to mitigate this initial penalty, then in each case, similar violations for similar sizes of businesses with the same degrees of culpability will yield similar penalties.

Where there are mitigating factors, the unadjusted penalty can be modified to reflect the circumstances of the individual violator in individual cases. This adjusted penalty is arrived at through a subjective process wherein the Department exercises its administrative discretion to mitigate the penalty in part or in its entirety. However, the Department's discretion is limited by the considerations mandated by the legislature in Section 11 of the IHMTA.

The violator has the burden of raising the mitigating facts as a defense to reduce the penalty sought. The Department will, however, consider such factors, to the degree known or to the degree possible, in setting the initial penalty as required by the IHMTA. In considering

mitigating factors when determining the preliminary amount to be assessed, the Department will attempt to determine the ability of the respondent to pay the penalty.

In cases where non-compliance is attributable to the Department or its enforcement agents, to impossibility, or to emergency (as these concepts are discussed in another part of this policy), the unadjusted penalty will be reduced for that part of the non-compliance attributable to the mitigating circumstances. In most such instances, a civil money penalty will not be assessed.

In cases where the Department determines that the violator will be unable to pay or to continue in business after paying the unadjusted penalty, an unlimited adjustment may be made. However, it will be considered that payments could be deferred or made in installments.

USE OF THE CIVIL MONEY PENALTY POLICY IN ENFORCEMENT ACTIONS

The goal of an administrative enforcement action is both expeditious compliance (including interim controls) and appropriate and adequate money penalties. Compliance and money penalties will not in any way be traded off against each other. The civil money penalty is not a substitute for compliance and is not intended to preclude injunctive relief or other non-duplicative remedies, particularly the administrative compliance order. Money penalties are not fees. Payment of money penalties does not give any right or privilege to continue operation in violation of law.

STATUTORY CONSIDERATION FOR ASSESSMENT OF THE CIVIL MONEY PENALTY

The Department has been expressly instructed by the legislature to consider certain factors in determining the amount of the assessed money penalty. These factors were not defined by the legislature. How they are to be defined and applied have been left to the Department. The determination of the specific amounts to be assessed must at a minimum be based on these factors. The legislature has not, however, precluded consideration of other factors. The following is a brief discussion of the concepts which underlie the statutory considerations.

A. Harm to the Public Health, Safety and Property.

It is the declared legislative intent of the IHMTA to protect the public against the risk to life and property inherent in the transportation of hazardous materials over highways by keeping such risks to a minimum consistent with technical feasibility and economic reasonableness. The civil money penalty will be used to redress this harm or risk of harm to the public health and safety.

The Department's authority under IHMTA is to regulate for the safe transportation of hazardous materials so as to prevent harm to life and property. Other state agencies are concerned with environmental considerations. Although one of the goals of the Hazardous Materials laws is to protect against harm to property, it does not appear that the legislature intended to use the civil money penalty to supplant the loss and damage claims structure of the transportation industry. Nor does it appear to be the intent of the legislature to place the Department in a position of "parens patriae" to use its civil penalty to collect a fund out of which to pay death, injury or property claims of individual private citizens. What is intended to be redressed is the harm or risk of harm to the collective public.

This factor is reflected in the statutory requirement that the Department consider the nature, circumstances, extent and gravity of the violation.

The "nature" of the violation encompasses the seriousness of the violation. It requires the Department to distinguish between technical violations as opposed to basic and fundamental violations. For example, omitting the hazardous materials description from the shipping paper is more fundamental than entering the description in the wrong sequence. Another example would be failure to indicate the "up" side of a packaging, versus indicating it in an unacceptable manner such as by hand-drawn marking across on the side of the package. The "nature" of the violation calls for examination of it on the continuum running from form to substance.

The "circumstance" of the violations is a broad consideration which would encompass both aggravating as well as mitigating factors. To the extent mitigating circumstances are known at the time the Department determines the civil penalty it will seek, they will serve to reduce the culpability factor and perhaps the weight given to other factors.

The "extent" of the violation requires the Department to consider whether the violation was widespread or confined. A violation limited to one package or one shipment, for example, must be contrasted with violations on all packages in the shipment or on all shipments by the company over a period of time.

The "gravity" of the violation is a consideration of the seriousness of the violation. This requires the Department to consider whether the violation resulted in harm to the public health and safety (looking at resulting death, injury or property damage) and whether the violation could have resulted in such harm. The Department will therefore be required to consider two distinct factors: what DID happen as a result of the violation and what COULD have

happened as a result of the violation. The gravity of the violation will be directly affected by the degree of hazard of the material, the volume of the material per package, the number of improper packages shipped and the relative exposure of transportation employees and the public to the hazard.

The penalty amount applicable to the harm or risk of harm will have to be determined on the facts of each specific case.

B. The Violator's Recalcitrance, Defiance or Indifference to the Requirements of the Law.

Philosophically speaking, good faith efforts to obey the law are expected of all persons subject to its jurisdiction. Mere assertions of "good faith" should not be considered as a basis for reducing the otherwise appropriate penalty. Courts traditionally consider the degree of the violator's recalcitrance, defiance, purposeful delay, or indifference to legal obligations in setting penalties. The Department will do so also, and will not hesitate to include a sum in the civil penalty to reflect such factors where they exist.

Care will be exercised, however, not to seek to add such an element of penalty on a person, firm, or entity for exercising, without purpose of delay, its lawful rights to challenge agency determination in administrative or court proceedings. A violator which has complied with all requirements that were not disputed while challenging the rest has not been, on those grounds alone, recalcitrant, defiant or indifferent. Such a violator is on a different footing from one which used a challenge of one aspect of its compliance requirement to delay all compliance, or which makes frivolous challenges for purposes of delay.

Consideration of a violator's recalcitrance, defiance, or indifference will require the Department to look at the violator's culpability and history of performance or, as stated by IHMTA, the history of prior offenses.

"Culpability" of the person is the quality of the person's awareness of his actions, and the degree to which he was responsible for averting such violations. Ignorance is no excuse and, to a great extent, ignorance in handling hazardous materials will weigh in favor of a more severe sanction, rather than less. In typical transportation, however, there often are other parties involved such as forwarding agents, contract packers, other carriers, warehousemen, and the like. To the extent a particular function under the regulations is not assigned to a specific person (and many are not), and to the extent that the performance of that function fell between multiple parties to a transaction, "culpability" of a particular person may be lessened. The degree of

“culpability” will be influenced for example by the hazard of the material in question, the quantity, the frequency with which this person deals with that material or the regulations, and other like considerations. Negligence in conducting one’s operations, or in monitoring agents and contractors performing operations on one’s behalf, will be considered in assessing “culpability.” In this element, the Department will weigh how avoidable the violation may have been. To the extent the violation may appear to have been intentional, for example, for the purpose of using cheaper packaging or getting lower freight rates, criminal prosecution, rather than a civil money penalty, may be in order.

The history of a violation performance in shipping and transporting hazardous materials will be considered by the Department. The Department will consider the violator’s performance record in terms of prior Notices of Apparent Violation, prior Warning Letters, and prior compliance efforts of the violator. Consideration will primarily be given to the violator’s history of performance in terms of previous occurrences of the same type of violation as the one for which the respondent is being charged. History of committing other acts prohibited by the Hazardous Materials laws will be considered but is not as significant as repetitions of the same type of prohibited act. For example, if the violation being charged is an equipment violation, the Department will focus primarily on the violator’s performance record of equipment violations. The Department will further consider the type of equipment violations involved. Prior administrative and judicial enforcement proceedings for the same type of violation which culminated in sanctions against the violator, whether through default judgments, consent decrees or order, will also be considered. The Department will also give consideration to any federal administrative or judicial actions which have been brought against the violator for federal hazardous materials offenses. The consideration of history of performance also reflects, in part, the statutory consideration of the degree of culpability.

C. Mitigation for Non-Compliance Caused by the Department Itself.

When failure to comply or compliance delay was caused by, requested by, or attributable to the Department or its enforcement agents, such as the Illinois State Police, civil money penalties are not appropriate. When the failure or delay was partially caused by the Department, the penalties may be reduced in proportion to the period of delay caused by the Department. It is expected that mitigation on this basis would only be permitted when the Department was clearly responsible for the delay. Consideration of this factor would fall under the statutory consideration of “such other matters as justice may require.”

D. Mitigation for Impossibility.

Where delayed compliance was, in fact, attributable to causes absolutely beyond the control of the violator (such as acts of nature) and was not due to the fault or negligence of the violator, a civil money penalty may not be required – even in instances where as a result of the impossibility the violator has enjoyed an economic benefit. The violator will bear the burden, however, of demonstrating that all reasonable steps were taken by him to comply. Examples of excusable circumstances would include natural disasters, fire, embargoes, strikes, and inability of a supplier to furnish materials. Non-compliance will not be excused where the violator encouraged or contributed to the impossibility or unduly delayed negotiations for needed equipment or materials through unreasonable demands, unusual restrictions, or other delays. If only a portion of the period of delayed compliance is attributable to such factors beyond the violator's control a civil money penalty will be sought only for that period of non-compliance that was not attributable to such factors. Considerations of impossibility would fall under the statutory considerations of "degree of culpability" and "such other matters as justice may require."

Shippers and carriers affected by this policy should understand that where they believe that they cannot comply with a requirement of the Hazardous Materials laws by reason of causes absolutely beyond their control, it is their responsibility to contact the Department's Hazardous Materials Section about their situation. If a shipper or carrier desires to continue to ship or transport hazardous materials until such time as it can bring itself back into compliance with the Hazardous Materials laws, then the shipper or carrier MUST make an application for an exemption by which application they MUST demonstrate that their actions, although not in compliance with the Hazardous Materials laws, will insure equivalent levels of safety. If a shipper or carrier cannot demonstrate this, then no exemption will be issued. Such a shipper or carrier must not ship or transport hazardous materials until compliance can once again be achieved. The Department will consider it to be a very serious violation where a shipper or carrier undertakes to excuse its own non-compliance even where non-compliance may be due to causes absolutely beyond the control of the shipper or carrier.

E. Other Bases for Mitigation.

There may also be other unforeseeable mitigating circumstances which might excuse all or a part of the otherwise appropriate civil money penalty. Acceptability of such a situation as a mitigating circumstance will have to be considered on a case-by-case basis. Another instance in which all or part of an otherwise appropriate civil money penalty might not be sought would be where

emergency needs (such as employment or energy) require non-compliance. Obviously, situations involving unusual mitigating circumstances must be looked at individually since the full range of such situations cannot be predicted. As discussed above under “impossibility,” a shipper or carrier who is unable to comply must make an application for an exemption. No shipper or carrier may at any time excuse itself from compliance.

Since the Act imposes absolute duties of compliance, the burden is clearly upon the violator to establish a compelling reason why a civil money penalty should be mitigated. This burden is satisfied only when serious efforts have been made to comply but actual impossibility or Department conduct alone have precluded compliance. Only in these instances have violators really made a “good faith” effort that excuses non-compliance.

All firms and individuals must be held to a standard that requires careful and diligent planning and serious effort to come into compliance in a timely manner.

F. Other Statutory Factors.

The IHMTA also requires consideration of a violator’s ability to pay and the effect on the violator’s ability to continue to do business. This requires the penalty to be a function of the “size” of the violator’s business. The objective of the Department’s penalty structure is to provide meaningful deterrence to all members of the industry and thereby encourage compliance. The size of business criteria will reflect the respondent’s ability to pay and continue in business and thereby provides an equivalent degree of deterrence despite differences in business size.

The penalty designed to provide adequate deterrence against a large business may be wholly inappropriate if assessed against a much smaller business. Such a penalty might cause the smaller business to terminate its operations. More nearly uniform deterrence can usually be achieved by assessing the smaller respondent a smaller penalty.

“Size” will be considered to be expressible in terms of some determinable financial criteria which reflects the respondent’s economic vitality or strength.

Consideration will also be given to whether to defer or reduce the penalty where a violator lacks the ability to immediately pay the full amount of the penalty.

An unlimited adjustment may be required upon consideration of the effect that the proposed money penalty will have upon a respondent's ability to continue in business. This consideration is the logical extreme of the criteria that relates to the size of the business. A penalty may be unreasonable if the respondent would suffer a severe economic hardship or if its business must be terminated. Deterrence and compliance in such a case might be achieved by coordinating a reduced money penalty with a compliance order or an injunction, rather than putting the respondent out of business through the imposition of a large money penalty.

If one cannot afford to conduct a hazardous materials shipping or carrying operation safely, however, then there is merit in having that operation go out of business.

CIVIL MONEY PENALTY MECHANISM

The civil money penalty shall be determined in accordance with the following mechanism:

Except as otherwise stated, a numerical value of from 1 to 5 shall be assigned to each of the following factors: (a) nature of the violation, (b) extent of the violation, (c) gravity of what did happen as a result of the violation, (d) gravity of what could have happened as a result of the violation, (e) culpability, (f) and history of performance for this or other hazardous materials offenses. A value of 4 or 5 in the gravity of what did happen will be weighted by doubling the value. Repetition of the same offense will always be valued at 5 and weighed by doubling it to 10. The doubling of these values reflects the Department's determination that repetition of the same violation or a violation which results in serious loss or injury should carry a greater penalty. The values assigned will be summed. The sum will be divided by the maximum possible weighted value per violation (40) and then multiplied by the maximum possible penalty per violation (\$10,000). The result will be the unadjusted civil money penalty which the Department will seek to assess in actions against violators.

Values will be assigned based upon the following limits:

NATURE would range from 1 for a purely technical violation but general overall compliance, to 5 for complete absence of effort to comply with a fundamental requirement.

EXTENT would range from 1 for a situation involving a single unit, partial violation on a single occasion, to 5 for multi-unit violations over an extended time period.

GRAVITY:

- A. Of what did happen, would range from 1 for light property damage or minor personal injury to 5 for a fatality or permanently disabling injury or substantial property damage. Any value of 4 or 5 automatically would be weighted by doubling to 8 or 10, respectively. If there is no personal injury or property damage a value of 0 would be assigned.
- B. Of what could have happened, would range from 1 for the general possibility of light property damage or minor personal injury, to 5 for the likelihood of fatal or permanently disabling consequences or substantial property damage. If there is no likelihood that there could have been personal injury or property damage a value of 0 would be assigned.

CULPABILITY would range from 1 for violation of requirements that should have been known, but as a practical matter were not seen, to 5 for violations of fundamental requirements for which that person was clearly responsible.

HISTORY OF PERFORMANCE:

- A. The value assigned for the prior prohibited acts of the same type as the one for which the violator is being charged would range from 1 where the violator had previously received a single Notice of Apparent Violation citing him for the same type of act, to 5 where sanctions pursuant to a Notice of Probable Violation or court action charging the same type of act were imposed against the violator, either by default, consent or order. Where a value of 5 is assigned, this value would be automatically weighted by doubling to 10.
- B. The value assigned for prior prohibited acts which are not the same type as the one for which the violator is being charged, would range from 0 for no such prior acts to 5 for multiple prior prohibited acts of requirements of a fundamental nature.

A series of examples may suffice to illustrate how this system would work. These examples present simple, hypothetical situations which do not reflect all circumstances which may arise.

Ex. 1: A shipper chronically fails to use required DOT specification packaging for a material corrosive to skin. This violation is observed on a

routine inspection. There is no leakage or damage. He has had other moderate hazardous materials violations in the past, but has not received sanctions for this one. A value of 5 would be assigned for the nature of the violation, which is total non-compliance with a fundamental requirement; a value of 5 is assigned for the extent of the violation, which involves all containers and has occurred over an extended time period; a value of 0 is assigned to the gravity of the event; a value of 2 is assigned for the gravity of the chemical burns that COULD have resulted; a value of 5 is assigned for culpability, since proper packaging is a primary shipper responsibility and he should have been aware of it; and a value of 2 is assigned for moderate past hazardous materials violations. This totals 19, divided by the maximum possible value of 40, times \$10,000, results in a preliminary civil penalty of \$4,750.

Ex. 2: In the same situation as Ex. 1, but where minor leakage has occurred, the value assigned to the gravity of what did happen would be raised to 2, raising the total value to 21, and raising the preliminary penalty to \$5,250.

Ex. 3: In the same situation as Ex. 1, but where there was substantial leakage of a material that permanently disabled a transportation worker, the gravity of what happened would be raised to 5 and automatically would double to 10, and the value of what could have happened would be raised to 5. This gives a total assigned value of 32, and a preliminary civil penalty of \$8,000.

Ex. 4: In the same situation as Ex. 3, but where there had been prior sanctions for the SAME offense, the value of 5 would be assigned to prior offenses and would automatically double to 10, giving a total of 40, and a preliminary civil penalty of the maximum \$10,000.

Ex. 5: A motor carrier is stopped on a routine check and has one of three placards missing from the vehicle, but he otherwise is in compliance, and has had previous moderate hazardous materials sanctions but none for placarding. A value of 1 would be assigned for the partial violation of a fundamental requirement, but where compliance otherwise was achieved; a value of 1 would be assigned for the extent, being a single missing placard on a single vehicle on a single occasion; a value of 0 would be assigned to the gravity of what did happen; a value of 1 would be assigned for the value of what could have happened, if there had been an emergency and there was a need to view the placard from the one side where it was missing; a value of 1 would be assigned for culpability, since although the maintenance of placards is the carrier's responsibility, in all likelihood this violation was inadvertent; and a value of 2 would be used for past hazardous materials violations. This totals 6, divided by 40, times \$10,000, results in a preliminary civil penalty of \$1,500.

Ex. 6: The same motor carrier in Ex. 5 is missing ALL placards from the vehicle, although the papers received from the shipper showed placards to be necessary. Values would change. A value of 5 would be assigned for the total failure to meet a fundamental requirement; a value of 2 would be assigned for the extent, since four placards were missing, but from a single vehicle on a single occasion; a value of 0 would be given the gravity of what did happen; a value of 5 would be given the gravity of what could have happened; a value of 5 would be assigned for culpability for total non-compliance with a responsibility that clearly is the carrier's; and a value of 2 would be assigned for past violations. This totals 19, for a preliminary civil penalty of \$4,750 (NOTE: If the placards were intentionally removed by the driver to avoid tunnel restrictions, etc., a civil penalty would apply to the company, and the Department might recommend criminal prosecution of the driver for a willful violation; if he was instructed to remove the placards by his supervisor, criminal prosecution might be recommended against the company and, perhaps, against the supervisor individually, as well.)

Ex. 7: The shipper in Ex. 1, in his reply to the notice of probable violation, proves that although the containers were not marked with the DOT specification marking, they were built to standards equivalent to or better than the specification requirements. In considering this "circumstance," the preliminary penalty values would be reassigned for the nature of the violation from 5 to 1, to reduce the gravity of what could have happened from 2 to 0, and to reduce the culpability from 5 to 1, since he carried the responsibility to meet packaging standards but did not meet the marketing requirements. This would provide a revised total of 9, and a willingness to settle in a settlement conference called by the presiding officer, for the reduced penalty of \$2,250 rather than the original figure of \$4,750.

If the reply indicates other circumstances to warrant reduction of the penalty, these will be taken into account to reduce the original values assigned. To the extent the recipient of the letter proves that he lacks the ability to pay or to continue to do business, consideration will be given to a staggered schedule of payments before agreeing to overall reduction of the penalty. Of course, there may be circumstances where the penalty should be reduced for reasons of financial distress, but those circumstances will be very limited.

The caveat bears repeating that this mechanism is a GUIDELINE, not a rigid formula that will be implemented blindly. To the extent that a particular case calls for unusual treatment, it may receive that treatment, irrespective of the penalty figures that the proposed system would impose. As a matter of routine, however, this system will provide a necessary measure of consistency

from case-to-case, violation-to-violation, and year-to-year in administering the Department's hazardous program.

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 171
HAZARDOUS MATERIALS TRANSPORTATION: GENERAL INFORMATION,
REGULATIONS AND DEFINITIONS

Section

- 171.1 Purpose and Scope (Repealed)
- 171.2 General Transportation Requirements (Repealed)
- 171.3 Hazardous Waste
- 171.4 Exemptions (Renumbered)
- 171.5 Agricultural Exception (Repealed)
- 171.6 Agricultural Exception (Renumbered)
- 171.7 Matter Incorporated by Reference (Repealed)
- 171.8 Definitions and Abbreviations (Repealed)
- 171.9 Rules of Construction (Repealed)
- 171.12 Import and Export Shipments (Repealed)
- 171.13 Imminent Danger
- 171.14 Specification Markings (Repealed)
- 171.15 Incident Reporting Requirements (Repealed)
- 171.17 Exemptions
- 171.18 Continuation of Effectiveness of Existing Bureau of Explosives Registrations (Repealed)
- 171.19 Approvals or Authorizations Issued by the Bureau of Explosives (Repealed)
- 171.21 Retailer Exception
- 171.22 Agricultural Exception
- 171.1000 Incorporation by Reference of 49 CFR 171

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. 41, effective February 1, 1979; amended at 6 Ill. Reg. 4287, effective April 16, 1982; amended at 7 Ill. Reg. 3486, effective April 2, 1983; codified at 8 Ill. Reg. 17984; amended at 10 Ill. Reg. 9636, effective May 15, 1986; amended at 10 Ill. Reg. 20753, effective December 1, 1986; emergency amendment at 11 Ill. Reg. 1684, effective January 16, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 4772, effective March 10, 1987; amended at 11 Ill. Reg. 7767, effective April 14, 1987; amended at 11 Ill. Reg. 17886, effective October 20, 1987; amended at 12 Ill. Reg. 8078, effective April 26, 1988; amended at 13 Ill. Reg. 3984, effective March 14, 1989; amended at 14 Ill. Reg. 2621, effective February 1, 1990; amended at 15 Ill. Reg. 7752, effective May 7, 1991; amended at 16 Ill. Reg. 12208, effective July 20, 1992; amended at 18 Ill. Reg. 7861, effective May 6, 1994; amended at 20 Ill.

Reg. 6539, effective April 30, 1996; emergency amendment at 21 Ill. Reg. 4043, effective March 17, 1997, for a maximum of 150 days; emergency expired August 13, 1997; amended at 22 Ill. Reg. 5694, effective March 4, 1998; amended at 22 Ill. Reg. 17011, effective September 30, 1998; amended at 25 Ill. Reg. 7292, effective May 19, 2001; amended at 26 Ill. Reg. 8927, effective June 5, 2002; amended at 28 Ill. Reg. 10076, effective July 1, 2004; peremptory amendment at 28 Ill. Reg. 11376, effective July 22, 2004; amended at 29 Ill. Reg. 671, effective December 20, 2004; peremptory amendment at 29 Ill. Reg. 1396, effective January 6, 2005.

Section 171.1 Purpose and Scope (Repealed)

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.2 General Transportation Requirements (Repealed)

(Source: Repealed at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.3 Hazardous Waste

- a) No person may offer for transportation or transport a hazardous waste in commerce (as defined in 49 CFR 171.8) by highway in Illinois except in accordance with the requirements of this Subchapter.
- b) No person may accept for transportation, transport, or deliver a hazardous waste for which a manifest is required unless that person:
 - 1) has marked each motor vehicle used to transport hazardous waste in accordance with 49 CFR 390.21 or 49 CFR 1058.2 even though placards may not be required;
 - 2) complies with the requirements for manifests set forth in 49 CFR 172.205; and
 - 3) delivers, as designated on the manifest by the generator, the entire quantity of the waste received from the generator or a transporter to:
 - A) the designated facility or, if not possible, to the designated alternate facility;
 - B) the designated subsequent carrier; or
 - C) a designated place outside the United States.

- c) If a discharge of hazardous waste or other hazardous material occurs during transportation, and an official of a State or local government or a Federal agency, acting within the scope of his official responsibilities, determines that immediate removal of the waste is necessary to prevent further consequence, that official may authorize the removal of the waste without the preparation of a manifest.

(Source: Amended at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.4 Exemptions (Renumbered)

(Source: Section 171.4 renumbered to Section 171.17 at 18 Ill. Reg. 7861, effective May 6, 1994)

Section 171.5 Agricultural Exception (Repealed)

(Source: Repealed at 22 Ill. Reg. 17011, effective September 30, 1998)

Section 171.6 Agricultural Exception (Renumbered)

(Source: Renumbered to Section 171.5 at 16 Ill. Reg. 12208, effective July 20, 1992)

Section 171.7 Matter Incorporated by Reference (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.8 Definitions and Abbreviations (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.9 Rules of Construction (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.12 Import and Export Shipments (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.13 Imminent Danger

No person may offer, accept, or transport a hazardous material in commerce by highway in Illinois, regardless of the quantity of hazardous material in the shipment or on the vehicle, if that material poses an imminent danger to the public. The State Police are authorized to stop

any vehicle that constitutes an imminent danger. For the purpose of this Section, an imminent danger exists if, in the opinion of the State Police officer or the representative of the Department at the scene, the offer, acceptance, or transportation of that hazardous material is likely to cause death, serious illness, or severe personal injury.

(Source: Added at 29 Ill. Reg. 671, effective December 20, 2004)

Section 171.14 Specification Markings (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.15 Incident Reporting Requirements (Repealed)

(Source: Repealed at 28 Ill. Reg. 10076, effective July 1, 2004)

Section 171.17 Exemptions

- a) No person may offer or accept a hazardous material for transportation in commerce if that hazardous material is subject to the provisions of an exemption issued by United States Department of Transportation (U.S. DOT) (49 CFR 107) unless the material is offered and accepted in accordance with the terms and conditions of the exemption or this Part.
- b) No person may transport a hazardous material in commerce if that hazardous material is subject to the provisions of an exemption issued by U.S. DOT unless the material is transported in accordance with the terms and conditions of the exemption or this Part.
- c) Exemptions from the regulations governing packages or containers of hazardous materials are subject to the following conditions:
 - 1) The outside of each package must be plainly and durably marked "DOT-E" followed by the number assigned;
 - 2) Each shipping paper issued in connection with a shipment made under an exemption must, in association with the entries required by 49 CFR 172.203, bear the notation "DOT-E" followed by the number assigned; and
 - 3) When an exemption issued to a shipper contains special carrier requirements, the shipper shall furnish a copy of the exemption to the carrier before or at the time a shipment is tendered.

(Source: Amended at 26 Ill. Reg. 8927, effective June 5, 2002)

Section 171.18 Continuation of Effectiveness of Existing Bureau of Explosives Registrations (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.19 Approvals or Authorizations Issued by the Bureau of Explosives (Repealed)

(Source: Repealed at 10 Ill. Reg. 9636, effective May 15, 1986)

Section 171.21 Retailer Exception

AGENCY NOTE: See 49 CFR 173.6 that is incorporated by reference at Section 173.3000 pertaining to Materials of Trade Exemption.

(Source: Amended at 22 Ill. Reg. 5694, effective March 4, 1998)

Section 171.22 Agricultural Exception

- a) This Subchapter c does not apply to the transportation in Illinois of an agricultural product, other than Class 2 material, by a farmer as a private intrastate carrier over local roads between fields of the same farm in approved containers and in the amounts and manner specified in 49 CFR 173.5(b)(2) and (4).
- b) Transportation of a Class 2 agricultural product by a farmer as a private intrastate carrier over local roads between fields of the same farm in approved containers and in the amounts and manner specified in 49 CFR 173.5(b)(2) and (4) are excepted from the requirements of subparts G and H of 49 CFR 172.
- c) Transportation of an agricultural product to or from a farm, within 150 miles of the farm, in approved containers and conforming to 49 CFR 173.5(b)(1),(2) and (4) are excepted from the requirements in subparts G and H of 49 CFR 172.
- d) See also 49 CFR 173.5(c) pertaining to specification packagings used for aerial application of formulated liquid agricultural products.
- e) See also 49 CFR 173.315(m) pertaining to nurse tanks of anhydrous ammonia.
- f) See also 49 CFR 173.6 pertaining to materials of trade.

(Source: Amended at 25 Ill. Reg. 7292, effective May 19, 2001)

Section 171.1000 Incorporation by Reference of 49 CFR 171

- a) As Part 171 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates the following sections of 49 CFR 171 by reference, as those sections of the federal hazardous materials transportation regulations were in effect on October 1, 2004, as amended at 69 FR 70902, December 8, 2004, and as amended at 69 FR 75208, December 15, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of those sections of 49 CFR 171 are incorporated.

<u>171.1</u>	<u>Applicability of Hazardous Materials Regulations (HMR) to persons and functions</u>
<u>171.2</u>	<u>General Requirements</u>
171.4	Marine Pollutants
171.7	Reference Material
171.8	Definitions and Abbreviations
171.9	Rules of Construction
171.10	Units of Measure
171.11	Use of ICAO Technical Instructions
171.12	Import and Export Shipments
171.12a	Canadian Shipments and Packagings
171.14	Transitional Provisions for Implementing Certain Requirements
171.15	Immediate Notice of Certain Hazardous Materials Incidents
171.16	Detailed Hazardous Materials Incident Reports
171.19	Approvals or Authorizations Issued by the Bureau of Explosives
171.20	Submission of Examination Reports

- b) The following interpretations of, additions to and deletions from the above incorporated sections of 49 CFR 171 shall apply for purposes of this Part.
- 1) All references to "this part" in the incorporated federal regulations shall mean Part 171 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

- 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
- 4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to that part or sections in the federal regulations.
- 5) All references to shipments of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
- 6) All references to "these regulations" or the Hazardous Materials Regulations (HMR) in the incorporated federal regulations shall be read to refer to the Illinois Hazardous Materials Transportation Regulations.
- 7) All references to a "settlement agreement", in these regulations, means a written understanding between the Department and the person being charged.
- 8) 49 CFR 171.1(f)(3) is not incorporated by reference and is replaced by the following:

Preemption determination procedures are in subpart C of 49 CFR107.
- 9) 49 CFR 171.1(g) is not incorporated by reference and is replaced by the following:

Each person who knowingly violates a requirement of the federal hazardous materials transportation law, an order issued under the federal hazardous materials transportation law, subchapter A of Chapter I of 49 CFR, an exemption or approval issued under subchapter A or C of Chapter I of 49 CFR, or the Illinois Hazardous Materials Transportation Regulations is liable for penalties established and set forth in 92 Ill. Adm. Code 107.314 and 107.371.
- 10) All references to approvals, exemptions or registration referred to in 49 CFR 171.2 shall be read to refer to the federal hazardous materials regulations.

(Source: Peremptory amendment at 29 Ill. Reg. 1396, effective January 6, 2005)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 172
HAZARDOUS MATERIALS TABLE AND HAZARDOUS MATERIALS
COMMUNICATIONS

Section

172.1000	General
172.2000	Incorporation by Reference of 49 CFR 172
172.2215	Permanent Shipping Papers (Repealed)

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 6 Ill. Reg. 4287, 4487, and 4573, effective April 16, 1982; amended at 7 Ill. Reg. 3486, effective April 2, 1983; amended at 8 Ill. Reg. 19640, effective October 1, 1984; codified at 8 Ill. Reg. 19601; amended at 8 Ill. Reg. 19622, effective October 1, 1984; emergency amendment at 8 Ill. Reg. 22889, effective November 9, 1984, for a maximum of 150 days; amended at 9 Ill. Reg. 3810, effective March 11, 1985; Part repealed, new Part adopted at 10 Ill. Reg. 5864, effective April 1, 1986; amended at 10 Ill. Reg. 20759, effective December 1, 1986; emergency amendment at 11 Ill. Reg. 1690, effective January 16, 1987, for a maximum of 150 days; amended at 11 Ill. Reg. 4777, effective March 10, 1987; amended at 11 Ill. Reg. 7773, effective April 14, 1987; amended at 11 Ill. Reg. 17893, effective October 20, 1987; amended at 12 Ill. Reg. 8084, effective April 26, 1988; amended at 13 Ill. Reg. 3993, effective March 14, 1989; amended at 14 Ill. Reg. 2628, effective February 1, 1990; amended at 15 Ill. Reg. 7760, effective May 7, 1991; amended at 16 Ill. Reg. 11851, effective July 13, 1992; amended at 18 Ill. Reg. 7874, effective May 6, 1994; amended at 20 Ill. Reg. 6549, effective April 30, 1996; amended at 22 Ill. Reg. 5703, effective March 4, 1998; amended at 22 Ill. Reg. 17019, effective September 30, 1998; amended at 25 Ill. Reg. 7287, effective May 19, 2001; amended at 26 Ill. Reg. 8935, effective June 5, 2002; amended at 28 Ill. Reg. 10083, effective July 1, 2004; peremptory amendment at 28 Ill. Reg. 11381, effective July 22, 2004; amended at 29 Ill. Reg. 681, effective December 20, 2004; peremptory amendment at 29 Ill. Reg. 1402, effective January 6, 2005.

Section 172.1000 General

This Part lists the hazardous materials table and hazardous materials communications regulations for the transportation of hazardous materials in Illinois.

Section 172.2000 Incorporation by Reference of 49 CFR 172

- a) As Part 172 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 172 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2004, as amended at 69 FR 75208, December 15, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 172 are incorporated.
- b) The following interpretations of, additions to and deletions from 49 CFR 172 shall apply for purposes of this Part.
 - 1) All references to "this part" in the incorporated federal regulations shall mean Part 172 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
 - 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
 - 4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.
 - 5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
 - 6) Any changes to 49 CFR 172 made effective by U.S. DOT Rulemaking Docket HM-187 (49 FR 21933 (May 24, 1984)) covering small arms ammunition are not incorporated.

(Source: Peremptory amendment at 29 Ill. Reg. 1402, effective January 6, 2005)

Section 172.2215 Permanent Shipping Papers (Repealed)

(Source: Repealed at 18 Ill. Reg. 7874, effective May 6, 1994)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 173
SHIPPERS GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

Section

173.2000 General

173.3000 Incorporation by Reference of 49 CFR 173

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 4 Ill. Reg. 30, p. 1244, effective July 10, 1980; amended at 5 Ill. Reg. 1715, effective February 9, 1981; amended at 6 Ill. Reg. 4287, effective April 16, 1982; amended at 6 Ill. Reg. 10036, effective August 2, 1982; amended at 7 Ill. Reg. 3486, effective April 12, 1983; codified at 8 Ill. Reg. 20015; Part repealed, new Part adopted at 10 Ill. Reg. 5886, effective April 1, 1986; amended at 10 Ill. Reg. 20764, effective December 1, 1986; amended at 11 Ill. Reg. 4781, effective March 10, 1987; amended at 11 Ill. Reg. 17898, effective October 20, 1987; amended at 12 Ill. Reg. 8089, effective April 26, 1988; amended at 13 Ill. Reg. 3998, effective March 14, 1989; amended at 14 Ill. Reg. 2651, effective February 1, 1990; amended at 15 Ill. Reg. 7765, effective May 7, 1991; amended at 16 Ill. Reg. 11856, effective July 13, 1992; amended at 18 Ill. Reg. 7895, effective May 6, 1994; amended at 20 Ill. Reg. 6560, effective April 30, 1996; amended at 22 Ill. Reg. 5720, effective March 4, 1998; amended at 22 Ill. Reg. 17028, effective September 30, 1998; amended at 25 Ill. Reg. 7304, effective May 19, 2001; amended at 26 Ill. Reg. 8939, effective June 5, 2002; amended at 28 Ill. Reg. 10088, effective July 1, 2004; peremptory amendment at 28 Ill. Reg. 11385, effective July 22, 2004; amended at 29 Ill. Reg. 685, effective December 20, 2004; peremptory amendment at 29 Ill. Reg. 1406, effective January 6, 2005.

Section 173.2000 General

This Part prescribes the requirements for shipments and packagings used for the transportation of hazardous materials in Illinois.

Section 173.3000 Incorporation by Reference of 49 CFR 173

- a) As Part 173 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 173 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2004, as amended at 69 FR 70902, December 8, 2004, and as amended at 69 FR 75208, December 15, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 173 are incorporated.
- b) The following interpretations of, additions to and deletions from 49 CFR 173 shall apply for purposes of this Part.
 - 1) All references to "this part" in the incorporated federal regulations shall mean Part 173 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
 - 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
 - 4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.
 - 5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
 - 6) Any changes to 49 CFR 173 made effective by U.S. DOT Rulemaking Docket HM-187 (49 FR 21933 (May 24, 1984)) covering small arms ammunition are not incorporated.
 - 7) 49 CFR 173.8(d)(3) is not incorporated by reference and is replaced by the following:

A non-specification metal tank having a capacity of less than 450 liters (119 gallons) is authorized in Illinois for the transportation of flammable

liquid petroleum products by an intrastate motor carrier subject to the following conditions:

- A) Containers shall be tanks constructed of 18 gauge or heavier steel or equivalent gauge aluminum.
- B) Tanks shall be securely fastened to prevent separation from the vehicle.
- C) Tanks shall be electrically bonded to the frame of the vehicle.
- D) Tanks shall be protected against leakage or damage in the event of a turnover.
- E) Tanks may not be drained by gravity. Top mounted pumps must be designed and labeled for use with flammable and combustible liquids. No top mounted pump shall be higher than the highest point of the vehicle or permanently attached appurtenances (i.e., roll bars).
- F) Flammable liquid petroleum products being transported on a single vehicle may not exceed 450 liters (119 gallons).
- G) Flammable liquid petroleum product is offered for transportation and transported in conformance with all other applicable requirements of this Subchapter.

AGENCY NOTE: To clarify the provisions of 49 CFR 173.315(a) Note 17 (7), the transportation of anhydrous ammonia was permitted within Illinois prior to January 1, 1981 as follows: Only specifications MC-330 and MC-331 cargo tanks with a design pressure of 250 p.s.i.g., that had been in anhydrous ammonia service in Illinois prior to February 1, 1979, could continue in such service subject to continued qualification as required by all design and testing requirements specified by 49 CFR 180. Non-specification cargo tanks, other than nurse tanks (49 CFR 173.314(m)), were not authorized in Illinois for anhydrous ammonia service. All specifications MC-330 and MC-331 cargo tanks placed in such service after February 1, 1979 had to meet all requirements for the specification, including a minimum design service of 265 p.s.i.g.

AGENCY NOTE: To clarify the provisions of 49 CFR 173.315(k)(6), the transportation of liquefied petroleum gas within Illinois prior to January 1, 1981 was as follows: Non-specification cargo tanks used to transport liquefied petroleum gas were not authorized for intrastate transportation within Illinois prior to January 1, 1981.

(Source: Peremptory amendment at 29 Ill. Reg. 1406, effective January 6, 2005)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 177
CARRIAGE BY PUBLIC HIGHWAY

Section

177.1000 General

177.2000 Incorporation by Reference of 49 CFR 177

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 4 Ill. Reg. 30, p. 1244, effective July 10, 1980; amended at 6 Ill. Reg. 4287, effective April 16, 1982; amended at 7 Ill. Reg. 3486, effective April 2, 1983; codified at 8 Ill. Reg. 18930; Part repealed, new Part adopted at 10 Ill. Reg. 5853, effective April 1, 1986; amended at 10 Ill. Reg. 20749, effective December 1, 1986; amended at 11 Ill. Reg. 4768, effective March 10, 1987; amended at 11 Ill. Reg. 17881, effective October 20, 1987; amended at 12 Ill. Reg. 8074, effective April 26, 1988; amended at 13 Ill. Reg. 3957, effective March 14, 1989; amended at 14 Ill. Reg. 2613, effective February 1, 1990; amended at 15 Ill. Reg. 7743, effective May 7, 1991; amended at 16 Ill. Reg. 11843, effective July 13, 1992; amended at 18 Ill. Reg. 7852, effective May 6, 1994; amended at 20 Ill. Reg. 6531, effective April 30, 1996; amended at 22 Ill. Reg. 5686, effective March 4, 1998; amended at 22 Ill. Reg. 17003, effective September 30, 1998; amended at 25 Ill. Reg. 7497, effective May 19, 2001; amended at 26 Ill. Reg. 8944, effective June 5, 2002; amended at 28 Ill. Reg. 10094, effective July 1, 2004; amended at 29 Ill. Reg. 691, effective December 20, 2004; peremptory amendment at 29 Ill. Reg. 1411, effective January 6, 2005.

Section 177.1000 General

This part prescribes the requirements for carriage by public highway for the transportation of hazardous materials in Illinois.

Section 177.2000 Incorporation by Reference of 49 CFR 177

- a) As Part 177 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 177 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2004, as amended at 69 FR 70902, December 8, 2004 subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 177 are incorporated.

- b) The following interpretations of, additions to and deletions from 49 CFR 177 shall apply for purposes of this Part.
- 1) All references to "this part" in the incorporated federal regulations shall mean Part 177 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
 - 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
 - 4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.
 - 5) All references to shipment of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.
 - 6) All references to motor vehicles engaged in interstate commerce shall be deemed to include any motor vehicle engaged in commerce within the State of Illinois.

(Source: Peremptory amendment at 29 Ill. Reg. 1411, effective January 6, 2005)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
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PART 178
SPECIFICATIONS FOR PACKAGINGS

Section

- 178.321 Specification MC 300; Cargo Tanks Constructed of Mild (Open Hearth or Blue Annealed) Steel, or Combination of Mild Steel with High Tensile Steel, or Stainless Steel, Primarily For the Transportation of Flammable Liquids or Poisonous Liquids, Class B
- 178.321.0.1 [178.321-1] General Requirements
- 178.321.0.2 [178.321-2] Material
- 178.321.0.3 [178.321-3] Thickness
- 178.321.0.4 [178.321-4] Joints
- 178.321.0.5 [178.321-5] Bulkheads, Baffles, and Ring Stiffeners
- 178.321.0.6 [178.321-6] Closures for Manholes
- 178.321.0.7 [178.321-7] Overturn Protection
- 178.321.0.8 [178.321-8] Outlets
- 178.321.0.9 [178.321-9] Vents, Valves, and Connections
- 178.321.1.0 [178.321-10] Protection of Fittings
- 178.321.1.1 [178.321-11] Emergency Discharge Control
- 178.321.1.2 [178.321-12] Shear Section
- 178.321.1.3 [178.321-13] Anchoring of Tank
- 178.321.1.4 [178.321-14] Gauging Devices
- 178.321.1.5 [178.321-15] Pumps
- 178.321.1.6 [178.321-16] Testing Requirements
- 178.321.1.7 [178.321-17] Marking of Cargo Tanks
- 178.321.1.8 [178.321-18] Certification
- 178.322 Specification MC 301; Cargo Tanks Constructed of Welded Aluminum Alloy (Grade 3S), To Be Mounted On and To Form Part Of Tank Motor Vehicles for Transportation of Flammable Liquids, and Poisonous Liquids, Class B
- 178.322.0.1 [178.322-1] General Requirements
- 178.322.0.3 [178.322-3] Certification
- 178.322.0.5 [178.322-5] Marking of Cargo Tanks
- 178.322.0.9 [178.322-9] Testing Requirements
- 178.322.1.1 [178.322-11] Material
- 178.322.1.2 [178.322-12] Thickness of Sheets and Ring Stiffeners
- 178.322.1.3 [178.322-13] Tolerance

- 178.322.1.4 [178.322-14] Joints
- 178.322.1.7 [178.322-17] Tank Outlets
- 178.322.1.8 [178.322-18] Bulkheads, Baffles, and Ring Stiffeners
- 178.322.1.9 [178.322-19] Tank Vents
- 178.322.2.0 [178.322-20] Valve and Faucet Connections
- 178.322.2.1 [178.322-21] Emergency Discharge Control
- 178.322.2.2 [178.322-22] Shear Section
- 178.322.2.3 [178.322-23] Protection of Valves and Faucets
- 178.322.2.4 [178.322-24] Overturn Protection
- 178.323 Specification MC 302; Cargo Tanks Constructed of Welded Aluminum Alloy (ASTM B209-57T), Primarily For the Transportation of Flammable Liquids, or Poisonous Liquids, Class B
 - 178.323.0.1 [178.323-1] General Requirements
 - 178.323.0.2 [178.323-2] Material
 - 178.323.0.3 [178.323-3] Thickness of Metal
 - 178.323.0.4 [178.323-4] Joints
 - 178.323.0.5 [178.323-5] Bulkheads, Baffles, and Ring Stiffeners
 - 178.323.0.6 [178.323-6] Closures for Manholes
 - 178.323.0.7 [178.323-7] Overturn Protection
 - 178.323.0.8 [178.323-8] Tank Outlets
 - 178.323.0.9 [178.323-9] Vents, Valves, and Connections
 - 178.323.1.0 [178.323-10] Protection of Fittings
 - 178.323.1.1 [178.323-11] Emergency Discharge Control
 - 178.323.1.2 [178.323-12] Shear Section
 - 178.323.1.3 [178.323-13] Anchoring of Tank
 - 178.323.1.4 [178.323-14] Gauging Devices
 - 178.323.1.5 [178.323-15] Pumps
 - 178.323.1.6 [178.323-16] Testing Requirements
 - 178.323.1.7 [178.323-17] Marking of Cargo Tanks
 - 178.323.1.8 [178.323-18] Certification
- 178.324 Specification MC 303; Cargo Tanks Constructed of Welded Ferrous Alloy (High-Tensile Steel), or Stainless Steel, Primarily For the Transportation of Flammable Liquids, or Poisonous Liquids, Class B
 - 178.324.0.1 [178.324-1] General Requirements
 - 178.324.0.2 [178.324-2] Material
 - 178.324.0.3 [178.324-3] Thickness of Metal
 - 178.324.0.4 [178.324-4] Joints
 - 178.324.0.5 [178.324-5] Bulkheads, Baffles, and Ring Stiffeners
 - 178.324.0.6 [178.324-6] Closures for Manholes
 - 178.324.0.7 [178.324-7] Overturn Protection
 - 178.324.0.8 [178.324-8] Outlets
 - 178.324.0.9 [178.324-9] Vents, Valves, and Connections
 - 178.324.1.0 [178.324-10] Protection of Fittings

- 178.324.1.1 [178.324-11] Emergency Discharge Control
- 178.324.1.2 [178.324-12] Shear Section
- 178.324.1.3 [178.324-13] Anchoring of Tank
- 178.324.1.4 [178.324-14] Gauging Devices
- 178.324.1.5 [178.324-15] Pumps
- 178.324.1.6 [178.324-16] Testing Requirements
- 178.324.1.7 [178.324-17] Marking of Cargo Tanks
- 178.324.1.8 [178.324-18] Certification
- 178.325 Specification MC 304; Cargo Tanks Constructed of Mild (Open Hearth or Blue Annealed) Steel, Welded Ferrous Alloy (High-Tensile) Steel, or Aluminum, Primarily For the Transportation of Flammable Liquids, or Poisonous Liquids, Class B, Having Reid (ASTM D-323) Vapor Pressures of 18 PSIA or More at 100 degrees F., But Less Than Those Stated in 92 Ill. Adm. Code 173.300, In Defining Compressed Gases
 - 178.325.0.1 [178.325-1] General Requirements
 - 178.325.0.2 [178.325-2] Material
 - 178.325.0.3 [178.325-3] Thickness of Metal
 - 178.325.0.4 [178.325-4] Joints
 - 178.325.0.5 [178.325-5] Bulkheads, Baffles, and Ring Stiffeners
 - 178.325.0.6 [178.325-6] Closures for Manholes
 - 178.325.0.7 [178.325-7] Overturn Protection
 - 178.325.0.8 [178.325-8] Tank Outlets
 - 178.325.0.9 [178.325-9] Safety Relief Devices, Valves, and Connections
 - 178.325.1.0 [178.325-10] Protection of Fittings
 - 178.325.1.1 [178.325-11] Emergency Discharge Control
 - 178.325.1.2 [178.325-12] Shear Section
 - 178.325.1.3 [178.325-13] Anchoring of Cargo Tank
 - 178.325.1.4 [178.325-14] Gauging Devices
 - 178.325.1.5 [178.325-15] Pumps
 - 178.325.1.6 [178.325-16] Testing Requirements
 - 178.325.1.7 [178.325-17] Marking of Cargo Tanks
 - 178.325.1.8 [178.325-18] Certification
- 178.326 Specification MC 305; Cargo Tanks Constructed of Aluminum Alloys for High-Strength Welded Construction, Primarily For the Transportation of Flammable Liquids, or Poisonous Liquids, Class B
 - 178.326.0.1 [178.326-1] General Requirements
 - 178.326.0.2 [178.326-2] Material
 - 178.326.0.3 [178.326-3] Thickness of Sheets
 - 178.326.0.4 [178.326-4] Joints
 - 178.326.0.5 [178.326-5] Bulkheads, Baffles, and Ring Stiffeners
 - 178.326.0.6 [178.326-6] Closures for Manholes
 - 178.326.0.7 [178.326-7] Overturn Protection
 - 178.326.0.8 [178.326-8] Tank Outlets

- 178.326.0.9 [178.326-9] Vents, Valves, and Connections
- 178.326.1.0 [178.326-10] Protection of Fittings
- 178.326.1.1 [178.326-11] Emergency Discharge Control
- 178.326.1.2 [178.326-12] Shear Section
- 178.326.1.3 [178.326-13] Anchoring of Cargo Tank
- 178.326.1.4 [178.326-14] Gauging Devices
- 178.326.1.5 [178.326-15] Pumps
- 178.326.1.6 [178.326-16] Testing Requirements
- 178.326.1.7 [178.326-17] Marking of Cargo Tanks
- 178.326.1.8 [178.326-18] Certification
- 178.330 Specification MC 310; Cargo Tanks Constructed of Ferrous Materials, Primarily For the Transportation of Corrosive Liquids
 - 178.330.0.1 [178.330-1] General Requirements
 - 178.330.0.2 [178.330-2] Material
 - 178.330.0.3 [178.330-3] Thickness of Metal
 - 178.330.0.4 [178.330-4] Joints
 - 178.330.0.5 [178.330-5] Bulkheads, Baffles, and Ring Stiffeners, Tank Supports, and Compartmentation
 - 178.330.0.6 [178.330-6] Closures for Manholes
 - 178.330.0.7 [178.330-7] Overturn Protection
 - 178.330.0.8 [178.330-8] Outlets
 - 178.330.0.9 [178.330-9] Vents, Valves, and Connections
 - 178.330.1.0 [178.330-10] Protection of Fittings
 - 178.330.1.1 [178.330-11] Emergency Discharge Control
 - 178.330.1.2 [178.330-12] Shear Section
 - 178.330.1.3 [178.330-13] Anchoring of Tank
 - 178.330.1.4 [178.330-14] Gauging Devices
 - 178.330.1.5 [178.330-15] Pumps and Compressors
 - 178.330.1.6 [178.330-16] Testing Requirements
 - 178.330.1.7 [178.330-17] Marking of Cargo Tanks
 - 178.330.1.8 [178.330-18] Certification
- 178.331 Specification MC 311; Cargo Tanks Constructed of Ferrous Metals or Aluminum, Primarily For the Transportation of Corrosive Liquids
 - 178.331.0.1 [178.331-1] General Requirements
 - 178.331.0.2 [178.331-2] Material
 - 178.331.0.3 [178.331-3] Thickness of Metal
 - 178.331.0.4 [178.331-4] Joints
 - 178.331.0.5 [178.331-5] Bulkheads, Baffles, and Ring Stiffeners, Tank Supports, and Compartmentation
 - 178.331.0.6 [178.331-6] Closures for Manholes
 - 178.331.0.7 [178.331-7] Overturn Protection
 - 178.331.0.8 [178.331-8] Outlets
 - 178.331.0.9 [178.331-9] Vents, Valves, and Connections

- 178.331.1.0 [178.331-10] Protection of Fittings
- 178.331.1.1 [178.331-11] Emergency Discharge Control
- 178.331.1.2 [178.331-12] Shear Section
- 178.331.1.3 [178.331-13] Anchoring of Tank
- 178.331.1.4 [178.331-14] Gauging Devices
- 178.331.1.5 [178.331-15] Pumps and Compressors
- 178.331.1.6 [178.331-16] Testing Requirements
- 178.331.1.7 [178.331-17] Marking of Cargo Tanks
- 178.331.1.8 [178.331-18] Certification
- 178.336 Specification MC 330; Cargo Tanks Constructed of Steel, Primarily For Transportation of Compressed Gases
 - 178.336.0.1 [178.336-1] General Requirements
 - 178.336.0.2 [178.336-2] Material
 - 178.336.0.3 [178.336-3] Thickness of Metal
 - 178.336.0.4 [178.336-4] Joints
 - 178.336.0.5 [178.336-5] Bulkheads, Baffles, and Ring Stiffeners
 - 178.336.0.6 [178.336-6] Closures for Manholes
 - 178.336.0.7 [178.336-7] Overturn Protection
 - 178.336.0.8 [178.336-8] Outlets
 - 178.336.0.9 [178.336-9] Safety Relief Devices, Valves, and Connections
 - 178.336.1.0 [178.336-10] Protection of Fittings
 - 178.336.1.1 [178.336-11] Emergency Discharge Control
 - 178.336.1.2 [178.336-12] Shear Section
 - 178.336.1.3 [178.336-13] Anchoring of Cargo Tank
 - 178.336.1.4 [178.336-14] Gauging Devices
 - 178.336.1.5 [178.336-15] Pumps and Compressors
 - 178.336.1.6 [178.336-16] Testing Requirements
 - 178.336.1.7 [178.336-17] Marking of Cargo Tanks
 - 178.336.1.8 [178.336-18] Certification
- 178.337 Specification MC 331; Cargo Tanks Constructed of Steel, Primarily For Transportation of Compressed Gases, As Defined In the Compressed Gas Section (Repealed)
 - 178.337.0.1 [178.337-1] General Requirements (Repealed)
 - 178.337.0.2 [178.337-2] Material (Repealed)
 - 178.337.0.3 [178.337-3] Thickness of Tank Metal (Repealed)
 - 178.337.0.4 [178.337-4] Joints (Repealed)
 - 178.337.0.5 [178.337-5] Bulkheads, Baffles, and Ring Stiffeners (Repealed)
 - 178.337.0.6 [178.337-6] Closure for Manhole (Repealed)
 - 178.337.0.7 [178.337-7] Overturn Protection (Repealed)
 - 178.337.0.8 [178.337-8] Outlets (Repealed)
 - 178.337.0.9 [178.337-9] Safety Relief Devices, Valves, and Connections (Repealed)
 - 178.337.1.0 [178.337-10] Protection of Fittings (Repealed)
 - 178.337.1.1 [178.337-11] Emergency Discharge Control (Repealed)

- 178.337.1.2 [178.337-12] Shear Section (Repealed)
- 178.337.1.3 [178.337-13] Supporting and Anchoring (Repealed)
- 178.337.1.4 [178.337-14] Gauging Devices (Repealed)
- 178.337.1.5 [178.337-15] Pumps and Compressors (Repealed)
- 178.337.1.6 [178.337-16] Testing (Repealed)
- 178.337.1.7 [178.337-17] Marking (Repealed)
- 178.337.1.8 [178.337-18] Certification (Repealed)
- 178.340 General Design and Construction Requirements Applicable to Specifications MC 306 (Section 178.341), MC 307 (Section 178.342), and MC 312 (Section 178.343) Cargo Tanks (Repealed)
- 178.340.0.1 [178.340-1] Specification Requirements For MC 306, MC 307, and MC 312 Cargo Tanks (Repealed)
- 178.340.0.2 [178.340-2] General Requirements (Repealed)
- 178.340.0.3 [178.340-3] Material (Repealed)
- 178.340.0.4 [178.340-4] Structural Integrity (Repealed)
- 178.340.0.5 [178.340-5] Joints (Repealed)
- 178.340.0.6 [178.340-6] Supports and Anchoring (Repealed)
- 178.340.0.7 [178.340-7] Circumferential Reinforcements (Repealed)
- 178.340.0.8 [178.340-8] Accident Damage Protection (Repealed)
- 178.340.0.9 [178.340-9] Pumps (Repealed)
- 178.340.1.0 [178.340-10] Certification (Repealed)
- 178.341 Specification MC 306; Cargo Tanks (Repealed)
- 178.341.0.1 [178.341-1] General Requirements (Repealed)
- 178.341.0.2 [178.341-2] Thickness of Shells, Heads, Bulkheads, and Baffles (Repealed)
- 178.341.0.3 [178.341-3] Closures for Fill Openings and Manholes (Repealed)
- 178.341.0.4 [178.341-4] Vents (Repealed)
- 178.341.0.5 [178.341-5] Emergency Flow Control (Repealed)
- 178.341.0.6 [178.341-6] Gauging Devices (Repealed)
- 178.341.0.7 [178.341-7] Method of Test (Repealed)
- 178.342 Specification MC 307; Cargo Tanks (Repealed)
- 178.342.0.1 [178.342-1] General Requirements (Repealed)
- 178.342.0.2 [178.342-2] Thickness of Shell, Heads, Bulkheads, and Baffles (Repealed)
- 178.342.0.3 [178.342-3] Closures for Manholes (Repealed)
- 178.342.0.4 [178.342-4] Vents (Repealed)
- 178.342.0.5 [178.342-5] Emergency Flow Control (Repealed)
- 178.342.0.6 [178.342-6] Gauging Devices (Repealed)
- 178.342.0.7 [178.342-7] Method of Test (Repealed)
- 178.343 Specification MC 312; Cargo Tanks (Repealed)
- 178.343.0.1 [178.343-1] General Requirements (Repealed)
- 178.343.0.2 [178.343-2] Thickness of Shell, Heads, Bulkheads, and Baffles of Non-Asme Code Tanks (Repealed)
- 178.343.0.3 [178.343-3] Closures for Manholes (Repealed)
- 178.343.0.4 [178.343-4] Vents (Repealed)

- 178.343.0.5 [178.343-5] Outlets (Repealed)
- 178.343.0.6 [178.343-6] Gauging Devices (Repealed)
- 178.343.0.7 [178.343-7] Method of Test (Repealed)
- 178.350 Specification 7A; General Packaging, Type A (Repealed)
- 178.350.0.1 [178.350-1] General Requirements (Repealed)
- 178.350.0.2 [178.350-2] Specific Requirements (Repealed)
- 178.350.0.3 [178.350-3] Marking (Repealed)
- 178.1000 General
- 178.2000 Incorporation By Reference of 49 CFR 178

178.APPENDIX C Tensile Specimen (Repealed)

178.APPENDIX D Material Thickness (Repealed)

178.TABLE A Minimum Thickness of Heads, Bulkheads, and Baffles (Repealed)

178.TABLE B Minimum Thickness of Shell Sheets (Repealed)

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 5 Ill. Reg. 1715, effective February 9, 1981; amended at 6 Ill. Reg. 10036, effective August 2, 1982; amended at 8 Ill. Reg. 19640, effective October 1, 1984; codified at 8 Ill. Reg. 20047; amended at 8 Ill. Reg. 20064, effective October 1, 1984; amended at 10 Ill. Reg. 5897, effective April 1, 1986; amended at 10 Ill. Reg. 20770, effective December 1, 1986; amended at 11 Ill. Reg. 4786, effective March 10, 1987; amended at 11 Ill. Reg. 17904, effective October 20, 1987; amended at 12 Ill. Reg. 8093, effective April 26, 1988; amended at 13 Ill. Reg. 4004, effective March 14, 1989; amended at 14 Ill. Reg. 2640, effective February 1, 1990; amended at 15 Ill. Reg. 7771, effective May 7, 1991; amended at 16 Ill. Reg. 11863, effective July 13, 1992; amended at 18 Ill. Reg. 7901, effective May 6, 1994; amended at 20 Ill. Reg. 6566, April 30, 1996; amended at 22 Ill. Reg. 5726, effective March 4, 1998; amended at 22 Ill. Reg. 17032, effective September 30, 1998; amended at 25 Ill. Reg. 7310, effective May 19, 2001; amended at 26 Ill. Reg. 8948, effective June 5, 2002; amended at 28 Ill. Reg. 10099, effective July 1, 2004; preemptory amendment at 28 Ill. Reg. 11390, effective July 22, 2004; amended at 29 Ill. Reg. 695, effective December 20, 2004; preemptory amendment at 29 Ill. Reg. 1415, effective January 6, 2005.

AGENCY NOTE: In reading this Part it is necessary to read Sections 178.1000 and 178.2000 prior to reading the remaining Sections in numerical order.

Section 178.1000 General

This Part prescribes the manufacturing and testing specifications for packaging and containers used for the transportation of hazardous materials in Illinois.

(Source: Added at 8 Ill. Reg. 20064, effective October 1, 1984)

Section 178.2000 Incorporation By Reference of 49 CFR 178

- a) As Part 178 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 178 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2004, as amended at 69 FR 70902, December 8, 2004 subject only to the exceptions in subsection (f) of this Section. No later amendments to or editions of 49 CFR 178 are incorporated.
- b) As Section 178.340 of the Illinois Hazardous Materials Transportation Regulations, the Department hereby incorporates 49 CFR 178.340 as that section of the federal hazardous materials transportation regulations was in effect on October 1, 1989.
- c) As Section 178.341 of the Illinois Hazardous Materials Transportation Regulations, the Department hereby incorporates 49 CFR 178.341 as that section of the federal hazardous materials transportation regulations was in effect on October 1, 1989.
- d) As Section 178.342 of the Illinois Hazardous Materials Transportation Regulations, the Department hereby incorporates 49 CFR 178.342 as that section of the federal hazardous materials transportation regulations was in effect on October 1, 1989.
- e) As Section 178.343 of the Illinois Hazardous Materials Transportation Regulations, the Department hereby incorporates 49 CFR 178.343 as that section of the federal hazardous materials transportation regulations was in effect on October 1, 1989.
- f) The following interpretations of, additions to and deletions from the 49 CFR 178 shall apply for purposes of this Part.
 - 1) All references to "this part" in the incorporated federal regulations shall mean Part 178 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.

- 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
- 4) All references to part 174, 175 or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.

(Source: Peremptory amendment at 29 Ill. Reg. 1415, effective January 6, 2005)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 179
SPECIFICATIONS FOR TANK CARS

Section

179.1000 General

179.2000 Incorporation By Reference of 49 CFR 179

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 3 Ill. Reg. 5, p. A1, effective February 1, 1979; amended at 6 Ill. Reg. 4287, effective April 16, 1982; old rules repealed, new rules adopted and codified at 8 Ill. Reg. 19677, effective October 1, 1984; amended at 10 Ill. Reg. 5909, effective April 1, 1986; amended at 10 Ill. Reg. 20824, effective December 1, 1986; amended at 11 Ill. Reg. 4796, effective March 10, 1987; amended at 11 Ill. Reg. 17915, effective October 20, 1987; amended at 12 Ill. Reg. 8102, effective April 26, 1988; amended at 15 Ill. Reg. 7781, effective May 7, 1991; amended at 16 Ill. Reg. 11875, effective July 13, 1992; amended at 18 Ill. Reg. 7912, effective May 6, 1994; amended at 20 Ill. Reg. 6577, effective April 30, 1996; amended at 22 Ill. Reg. 5736, effective March 4, 1998; amended at 22 Ill. Reg. 17042, effective September 30, 1998; amended at 25 Ill. Reg. 7320, effective May 19, 2001; amended at 26 Ill. Reg. 8958, effective June 5, 2002; amended at 28 Ill. Reg. 10112, effective July 1, 2004; amended at 29 Ill. Reg. 706, effective December 20, 2004; amended at 29 Ill. Reg. 1381, effective January 6, 2005.

Section 179.1000 General

This Part prescribes the specifications for tanks that are to be mounted on or form a part of a tank car and which are used for the transportation of hazardous materials in Illinois.

Section 179.2000 Incorporation By Reference of 49 CFR 179

- a) As Part 179 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates the following subpart and sections of 49 CFR 179 by reference, as those sections of the federal hazardous materials transportation regulations were in effect on October 1, 2004, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of those sections of 49 CFR 179 of the federal regulations are incorporated.

179.1 General

179.2	Definitions and abbreviations
179.5	Certificate of Construction
179.6	Repairs and alterations
179.7	Quality Assurance program
179.10	Tank mounting
179.11	Welding certification
179.12	Interior heater systems
179.16	Tank-head puncture-resistance systems
179.18	Thermal protection systems
179.20	Service equipment; protection systems
179.22	Marking
<u>subpart E</u>	<u>Specifications for Multi-Unit Tank Car Tanks (Classes DOT-106A and 110AW)</u>

- b) The following interpretations of, additions to and deletions from the above incorporated sections of 49 CFR 179 shall apply for purposes of this Part.
- 1) All references to "this part" in the incorporated federal regulations shall mean Part 179 of the Illinois Hazardous Materials Transportation Regulations.
 - 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
 - 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations except references to Section 179.3 shall mean 49 CFR 179.3.

(Source: Amended at 29 Ill. Reg. 1381, effective January 6, 2005)

TITLE 92: TRANSPORTATION
CHAPTER I: DEPARTMENT OF TRANSPORTATION
SUBCHAPTER c: HAZARDOUS MATERIALS TRANSPORTATION REGULATIONS

PART 180
CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGING

Section

180.1000 General

180.2000 Incorporation by Reference of 49 CFR 180

AUTHORITY: Implementing Section 4(a) and authorized by Section 9(a) of the Illinois Hazardous Materials Transportation Act [430 ILCS 30/4(a) and 9(a)].

SOURCE: Adopted at 14 Ill. Reg. 2617, effective February 1, 1990; amended at 15 Ill. Reg. 7748, effective May 7, 1991; amended at 16 Ill. Reg. 11847, effective July 13, 1992; amended at 18 Ill. Reg. 7857, effective May 6, 1994; amended at 20 Ill. Reg. 6535, effective April 30, 1996; amended at 22 Ill. Reg. 5690, effective March 4, 1998; amended at 22 Ill. Reg. 17007, effective September 30, 1998; amended at 25 Ill. Reg. 7283, effective May 19, 2001; amended at 26 Ill. Reg. 8962, effective June 5, 2002; amended at 28 Ill. Reg. 10116, effective July 1, 2004; amended at 29 Ill. Reg. 711, effective December 20, 2004.

Section 180.1000 General

This Part prescribes the requirements for maintenance, use, inspections, repair, retest and requalification of packagings used for the transportation of hazardous materials in Illinois.

Section 180.2000 Incorporation by Reference of 49 CFR 180

- a) As Part 180 of the Illinois Hazardous Materials Transportation Regulations, the Department incorporates 49 CFR 180 by reference, as that part of the federal hazardous materials transportation regulations was in effect on October 1, 2004, subject only to the exceptions in subsection (b) of this Section. No later amendments to or editions of 49 CFR 180 are incorporated.
- b) The following interpretations of, additions to and deletions from 49 CFR 180 shall apply for purposes of this Part.
 - 1) All references to "this part" in the incorporated federal regulations shall mean Part 180 of the Illinois Hazardous Materials Transportation Regulations.

- 2) All references to "this chapter" or "this subchapter" in the incorporated federal regulations shall mean 92 Ill. Adm. Code: Chapter I, Subchapter c.
- 3) All references to a section of the regulations in the incorporated federal regulations shall be read to refer to that Section in the Illinois Hazardous Materials Transportation Regulations.
- 4) All references to part 174, 175, or 176 or to sections therein shall be read to refer to those parts or sections in the federal hazardous materials transportation regulations.
- 5) All references to shipments of hazardous materials by air, water and rail are incorporated for reference purposes only for those persons contemplating intermodal movements of hazardous materials.

(Source: Amended at 29 Ill. Reg. 711, effective December 20, 2004)